TRIAL

OF

HENRY W. ALLEN,

U. S. DEPUTY MARSHAL,

FOR

KIDNAPPING,

WITH

ARGUMENTS OF COUNSEL & CHARGE OF JUSTICE MARVIN,

ON THE

CONSTITUTIONALITY

OF THE

FUGITIVE SLAVE LAW,

IN THE

SUPREME COURT OF NEW YORK.

Goodell Anti-Slavery Collection No. 26

PRESENTED TO

OBERLIN COLLEGE

BY THE HEIRS OF

WILLIAM GOODELL.

STATEMENT

of the facts out of which arose the trial of Henry W. Allen for Kidnapping, at the Onondaga Circuit, in June, 1852.

On the first day of October, 1851, a man named William Henry resided at the First Ward of the city of Syracuse, where he was pursuing the trade of a Cooper. He had been a resident of the city for a considerable time previous to that day. During the morning of that day he was seized by Marshal Allen and his assistants, who claimed that he had been guilty of some ffoence against the State laws. After he had quietly given himself in custody, he was ironed, and taken in a carriage to the office of Joseph F. Sabine, Esq., U. S. Commissioner, and on the way was informed, that he was claimed as a fugitive slave. The warrant, on which he was arrested, bore date on the 30th of September. On the first day of October, the city was crowded with citizens of the county, who were attending their County Fair, and with strangers who were attending a State Convention of the Liberty Party. A manacled slave, in the city of Syracuse, was a novelty, and an immediate and intense excitement ensued. Citizens and strangers flocked to the Commissioners Office—the bells of the churches were tolled—Counsel volunteered to defend the person claimed, and the trial proceeded—the agent of the claimant sitting in Court armed, and the man claimed, in chains. As the Court was about adjourning for dinner, the room being densely packed, the man Henry made an effort to escape, and being indirectly aided by the bystanders—though without any apparent concert—got out of the room in advance of those having him in custody, and fled. He was overtaken, however, by some of the police of the city, and a few volunteer assistants, placed upon a cart, and drawn back through the crowded streets, his clothes torn off, and excessively bruized in the struggle, and was taken to the Police Office of the city. The trial was resumed in the afternoon, the excitement continually increasing, and a large crowd gathered in front of the Office. As evening approached, stones were thrown into the Office, and early in the evening, the Court was abruptly adjourned until morning. The Commissioner of the Counsel, and most of the spectators, left the Police Office, leaving Henry in charge of Marshal Allen, and the Marshals from Auburn, Canandaigua, and Rochester (who by *some accident* happened here on that day), and the Claimant Lear. About nine o'clock in the evening, the doors and windows of the Police Office were forced, and Henry rescued and sent to Canada.

This occurrence was followed by the Indictment in the United States District Court, of several persons charged with aiding in the rescue, and an Indictment in the State Court of Allen and Lear for kidnapping.

A joint indictment was found in the Oyer and Terminer for Onondaga County, against Allen and Lear, under a Statute of New York, passed May 6, 1840, entitled—"An act to extend the right of trial by Jury." (Chap. 225 of Laws of 1840.) The seventeenth section of that Act is as follows:

"17. Every person who shall, without the authority of law, forcibly remove, or attempt to remove from this State any fugitive from service or labor, or any person who is claimed as such

fugitive, shall forfeit the sum of five hundred dollars to the party aggrieved, and shall be deemed guilty of the crime of kidnapping, and, upon conviction of such offence, shall be punished by imprisonment in the State Prison for a period not exceeding ten years."

This Indictment was removed into the Supreme Court by Allen, who alone was arrested (Lear having left the State), and he plead a special plea in bar, setting forth the issuing of the warrant by Sabine, whom he averred to be Commissioner, delivery to him as Deputy of the Marshal, and that the man was seized under its authority; and justifying the seizure under the Fugitive Slave Act of September 1850. To this plea the District Attorney replied, denying the matters stated in the plea, and denying the authority of the Commissioner to issue, or the Marshal to serve, such warrant.

The Indictment was sent down to the Circuit Court to be tried, and, on the 21st June, 1852, came on for trial.

PROCEEDINGS.

[Reported by W. L. Crandal, of Syracuse.]

This case is the first one of the kind that has been brought since the Constitution of the United States was adopted. It, therefore, possesses, on that acccount, an importance which could not otherwise nttach to it.

Henry W. Allen, the defendant, is Deputy U. S. Marshal. As such, a warrant, issued by Jos. F. Sabin, U. S. Commissioner, for the arrest of one Jerry, otherwise called William Henry, on the 29th of September, 1851, was placed in his hands. It was alleged in said warrant that said Jerry owed "service and labor" to a party in Missouri. On the next day—1st of October—Allen executed the wnrrant, by the arrest of the man Jerry, who was brought by him before Commissioner Sabine for examination, with n view to deciding whether he should be returned to Missouri, on the claim set up on the warrant.

Before this examination was concluded, it is well known that Jerry left for parts unknown, so far as the records of the U. S. Commissioner show.

Marshal Allen was presented before the Grand Jury of Onondaga County, at the October session of the County Court, 1851, for indictment under a law of the State of New York, 1840, to protect the rights of its citizens—or against kidnapping.

The Grand Jury found a true bill against Marshal Henry W. Allen, under said Act for kidnapping, in arresting Jerry under the said warrant.

And hence, the case set down for this day, 21st June, 1852, at the Onondaga Circuit, before Justice Marvin.

The proceedings of Marshal Allen were founded on the act called the Fugitive Slave Law, passed September 1840.

The proceedings before the Grand Jury, on which Marshal Allen was indicted, were founded on an Act of the Legislature of New York, of 1840.

It would seem—the Reporter would beg leave to say—that the question in this case is, whether in the State of New York, any man has the rght, on any authority whatever, to place another person who has not committed crime, and is not charged with crime, or breach of contract, in *durance vile*, with impunity. Marshal Allen, in the arrest of Jerry, acted in conformity to the law of Congress of September, 1850—which would seem to make the issue, that the law is inconsistent with the constitutional rights of the people of the State of New York.

Counsel for the people.—Rowland H. Gardner, District Attorney of Onondaga County, Charles B. Sedgwick, and Gerrit Smith.

For the Defendant—U. S. Dist. Attorney, James R. Lawrence, George F. Comstock, and Stephen D. Dillaye.

At 10 minutes before 10 o'clock, the case was called, when—

Mr Sedgwick stated that the witnesses for the prosecution had been subpœned, but were not present in Court. The case was reserved.

Afternoon Session.

At half-past 3 o'clock, the case was again called.

The following jury was empanelled:

Samuel Gilley,	Zenas Wright,	Benj. Youngs,
Orange Hill,	Wm. K. Blair,	Seth Rhoades,
Elias W. Benson,	Wm. Van Alstine,	Wm. Wickham,
Richard Patton,	Warren Austin,	Wm. K. Skinner.

As soon as the panel was completed, Mr. Lawrence called for the names.

They were read over by the Clerk.

Mr. Lawrence enquired if there were any more names in the box? [Clerk: There are.]

No challenges were made, and the Jury was sworn.

Mr. Lawrence raised the question whether the defence had the affirmative. The indictment charges the defendant, with force and arms, and without authority of law, arresting one Jerry, a man of color. The indictment is under the statute of 1840, sec. 26. Mr. L. read the section of the statute, imposing a fine of $500, and ten years of imprisonment, for kidnapping. Mr. L. then read documents showing that the defendant acted in conformity to law—including the warrant issued by U. S. Commissioner Sabine, for the arrest of Jerry, with a view to his return to John McReynolds, of Missouri, as a fugitive from service and labor. It included, also, the return of Marshal Allen, to the warrant. The defendant denies that the people of the State of New York, can prosecute him.

Mr. L. went on to remark that in reply, the prosecution simply deny the facts set forth as to the issuing of a warrant; deny that Sabine was a U. S. Commissioner; that he was duly appointed; deny that he had a right to issue the warrant, &c.

Mr. L. said: We suppose that all we have to do is to attend to the facts herein denied, and prove them to be true; and we suppose that we have the affirmative.

Mr. C. B. Sedgwick did not so understand the state of the case. Marshal Allen—it is claimed by the people—did feloniously, &c., take the man Jerry, without authority of law. He supposed that the defendant's counsel would not admit the indictment but intended merely a special plea. The defendant must either admit or deny what is charged. Such is the English law—Archbold's Criminal Pleading, 86th page, and such is our own law. The counsel read to show that the only case where a special plea was admissible, was when a county or town are indicted in reference to the repair of a bridge, in order to proceed to show that other parties ought to have done the work. In this case, the offence is admitted; but the attempt is made to show that other parties are at fault. Counsel also read from page 94, that the prosecution is bound to show the offence, and that the defence can show everything going to rebut the allegations of the prosecution.

Counsel referred to 2d Revised Statutes, page 611. The party arraigned may demand trial—and a plea of *not guilty* is to be entered by the Court, in all cases wherein the truth of the indictment is not admitted. He went on to say, that it was competent for the prosecution, under the indictment, to prove that Marshal Allen did things in reference to Jerry out of the warrant. They, therefore, proposed to go on and prove these things, under the traverse of the indictment.

The Court: Mr. Sedgwick, what am I to do? Here is an issue sent down from the Supreme Court, to be tried. What can I do but try that issue as presented?

Mr. Sedgwick: I suppose you are to try the question, under the indictment, as it would be done in any Court. That you are to try the case as in any other Oyer and Terminer.

The Court spoke of it, as a special issue, arising from the Defendant's special plea. That the case would be confined to the special plea, when no further answer was made by the Prosecution. If Mr. Sedgwick is right, are we in a position to try the case at all?

Mr. Sedgwick supposed that the case must be tried on the indictment, unless the Defendant admitted it to be true.

The Court referred to the practice in trying immaterial issues sent down, &c. It called Mr. Lawrence's attention to the fact, that Mr. Sedgwick expected the case would be tried on the original pleadings.

Mr. Lawrence said a special plea in a criminal case, was good. You are not precluded from it. They have not demurred. They have made certain allegations. We say all we did, was to take the man on the warrant, and bring him into Court. They denied that we did it.—The whole object of the special plea, was to obviate the necessity of testimony. What have we consented to try? That Sabine was Commissioner—that he issued the warrant—that Marshal Allen arrested Jerry on it—and that is the end of the case. He contended that Archabold did not preclude them from pleading specially. It was done in civil cases, to save the expense of testimony. He went on to read from Archabold, that only in certain cases a special plea "seems requisite." We always had a right, in criminal cases, to plead specially. It was never intended to preclude the right. In certain cases, it is necessary. He claimed that by the authority, they had a right to plead specially any thing in bar. The Statute of our State, read by Mr. Sedgwick, had nothing to do with pleadings as in this case.

The Court: It is agreed by all of you, that a plea of "Not Guilty," would be a good plea.

Mr. Lawrence: Very well. We admit that we did take the man—but that we took him properly, and deny that we did any thing more than we state. Mr. L. read from Wharton's Precedents to Indictments, to show that in Massachusetts special pleas were good. He maintained that no authority against special pleas, could be shown. We are to have the affirmative. How can they begin? What have they to show? By the pleadings, they have consented that when we have proved the warrant, and the arrest under it, the case is ended. They cannot go on and show that other things were done.

Mr. Sedgwick said the gentleman did not seem to apprehend the point in the case. The reply of Defendant, is a general denial of the indictment—and that is a plea of "Not Guilty." The statute says, if the Defendant does not deny the indictment, he confesses it. He says, also, that he acted by authority of law—we say he did not—and here is an issue. We are bound under that plea, to go on and prove that he did what is charged, and without authority of law. There was no such things under the laws of this State, as a prisoner escaping from a trial by any trick of special pleadings. He referred to the statute of this State.

The Court requested its reading again.

Mr. Sedgwick read, and continued: The statute applies precisely. The Defendant, in his pleadings, denies the truth of the indictment, and that brings up the whole case, from the starting point.

Mr. Lawrence: According to your argument, you could have no special plea.

Mr. Sedgwick: He can make the plea *anter foi acquit*—but by that you confess to the charge in the indictment: admits he has been tried on it, and therefore cannot be tried again. By this Statute, if a defendant denies the indictment, it is a plea of "Not Guilty." The Defendant here has denied the indictment—and that makes an issue. We admit all they claim in regard to the action of the Commissioner, Marshal, &c.; but we have come to try the body of the indictment. The question is not one of form, as raised by the counsel, but one of substance—as to what we are to try. From this, there is no escape.

The Court: The Pleadings present a singular state of facts. I know of no way, but to try the issues the parties have seen fit to make. Read from the Statute, in regard to kidnapping. The indictment substantially follows the Statute. The Defendant then comes in, and says he acted according to law. He then avers that this is his offence as charged—and that he has done no more.

The People, instead of demurring, take issue on it. Now, is not this the issue before me? If I regard it as a mere plea of "Not Guilty," I must strike out all these pleadings. Can I do this? In another place—in the General Term, he could hear the motion. But here he had only to hear the issues as presented. He had decided notions as to this form of pleading—but he would not give them. He could not see what the Jury could find upon, except the issues presented by the pleadings. To say the least of it, it is a very unusual way of pleading.

Mr. Sedgwick: I suppose the Jury are to find whether this Defendant is guilty or not guilty?—not whether Sabin is Commissioner, and Allen a Marshal.

The Court expressed assent.

Mr. Lawrence: Guilty of what?

Mr. Sedgwick: Guilty of attempting feloniously to take a man from the State of New York—"Kidnapping" in technical language.

It was then agreed that the defence was to proceed, as first claimed by Mr. Lawrence.

Mr. George F. Comstock then read the following stipulation:

SUPREME COURT:
The People vs. Henry W. Allen.

It is stipulated to admit on the trial of this cause, that on the 1st day of October last, Joseph F. Sabin, Esq., was a Commissioner of the United States Circuit Court, appointed by order of that Court, entered on the 27th day of June, 1849; that on that day as such Commissioner, he issued the warrant hereto annexed to the defendant in this cause as Deputy Marshal of the United States; that the Defendant or some Deputy Marshal executed said warrant on the same day by arresting Jerry therein named, and bringing him before the said Commissioner, and that he made his return to said warrant, which is endorsed thereon.

R. H. GARDNER, Dist. Att'y.

Mr. Sedgwick read a stipulation substantially admitting, that the person claimed was a resident of this State—that James Lear, as the agent of one John McReynolds, of Missouri, who claimed that he owed him labor or service, as a slave for life, came here with the intent to remove the man Jerry forcibly from the State—that Allen, (acting as Marshal,) with a knowledge of the claim and intent of Lear, assisted in taking him.

Mr. Sedgwick then called Frederick Morrell. No answer. He then called Joseph F. Sabin.

Mr. Lawrence asked what he wished to prove?

Mr. Sedgwick said he wished to prove by Morrell, that for some time Jerry had been a resident.

It was contended and agreed, that Jerry was such resident.

Mr. Lawrence desired to know what counsel desired to prove?

Mr. Sedgwick: By Mr. Sabin, we propose to show, that the defendant took measures to keep Jerry after the return was made on the warrant.

Mr. Comstock: That is beyond the pleadings, and is therefore excluded.

Mr. Sedgwick: We may as well state the whole case. We propose to show that Allen took measures before the warrant was issued to secure Jerry for the purpose or retaining him, and acts after the warrant was returned.

The Court suggested, that if there were any charges in the indictment not admitted in the special plea, they were confessed; and it was not necessary to go into the proof.

Mr. Sedgwick thought we were in danger of confusion, by confounding civil with criminal pleadings.

Mr. Comstock: They charge us with attempting to remove a man without authority of law. We admit that we attempted to remove the man—but showed the authority. They simply put themselves, in their plea, on a denial of the facts. The special pleading in a criminal case, does not differ from special pleading in a civil case. What do they propose to show? That the defendant acted outside of the warrant. He supposed that some great principle was at stake—a constitutional principle. He was prepared for that, and to show the unconstitutionality of the law of New York under which this indictment was found.

The Court: It is intended, I suppose, to raise the Constitutional question.

Mr. Sedgwick; It is.

Mr. Lawrence: Not here—before this Court. Elsewhere it may be raised.

Mr. Sedgwick: It will be a fine time to raise that question after the prisoner has gone.

Mr. Lawrence went on to insist that the Prosecution were attempting to change the issue. They have said to us, "If you prove what is in your special plea, there is an end of the case." That is the language of the plea. He insisted that, as they had not demurred, the constitutional question could not be raised. The facts are all made out, that we alleged—we have proven that the issue as sent here to be tried, is all true as maintained by us—and yet are we to be beat?

The Court supposed that there was a general understanding as to the facts, but that the Prosecution denied that the warrant was a warrant—that it was good for nothing.

Mr. Sedgwick: Yes, sir; that is the very question we expected to meet.

Mr. Lawrence thought otherwise. When the Defendant plead, he supposed the prosecution would demur.

The Court thought the Constitutional question could be raised under the pleadings.

Mr. Comstock said the particular question now up, was, whether the Prosecution could come into Court with testimony not referred to in the pleadings.

The Court decided that the testimony offered could not be admitted.

The case was therefore declared closed.

The Court then suggested that the Counsel amicably agree among themselves as to the order of summing up. The case was under the laws of this state: it was charged that an offence had

been committed against the laws of this State; on the other hand, that the act was done under authority of the laws of the United States; again on the other, that the law of Congress was unconstitutional, and therefore void.

Mr. Sedgwick said he had suggested, that the Prosecution open the argument.

This was assented to. After a short recess—

Mr. Sedgwick said, that in view of Mr. Comstock's intimation that he would maintain the unconstitutionality of the 26th section, (Rev. Statutes, 3d Ed.) and the law of New York, under which this Indictment was found, he would make a statement of the history and provisions of the law of New York, under which this indictment was found., and proceeded to do so.

When he had concluded, it was agreed that the Court would adjourn till 8 o'clock to-morrow morning, when Mr. Smith was to commence his argument for the prosecution.

Second Day—Morning Session.

At 10 minutes past 8 o'clock, the Jury having taken their seats, the Court was called to order by His Honor, the presiding Judge, R. P. Marvin.

The Jury was called, and eleven answered.

The Crier called on the Sheriff to send for Wm. K. Blair, who was absent.

At half past 8 o'clock, Mr. Blair arrived, and the Court stated that the argument could proceed.

[Note by the Reporter.—From these proceedings, lawyers will understand precisely how much, and precisely how little, the jury had to do with the decision of this case. Others may not. So I will state, that not a word was addressed to the jury by counsel. Not a fact was placed before them, save those in the stipulation—that Allen was a Marshal, Sabino Commissionor, &c. The only question raised was, whether or not the Fugitive Slave Law is constitutional—and that trial was before the judge. At the conclusion of the argument, Judge Marvin gave to the jury a review of the constitutional question—pronounced the law constitutional—and at the close of his review, advised the "jury to bring in a verdict for the defendant of 'Not Guilty.'" This the jury did at once, in answer to the inquiry of the Clerk. Their part in the decision, was one of form, only.]

ABSTRACT

OF

GERRIT SMITH'S ARGUMENT.

Having closed his introductory remarks, Mr. Smith proceeded to say—It is admitted in the pleadings, that the prisoner had a part in this undertaking to sink his fellow-man into slavery. It is true, that these admissions do not make that part as extensive, as it really was, and as extensive as we should have shown it to be, had we been allowed to produce witnesses. It nevertheless, answers my purpose in the argument, which I am, now, to make, that the prisoner had a confessedly clear and responsible part in this undertaking.

And, now, what is the prisoner's excuse for this high crime against his brother man? It is, that he acted under law, and according to law. Well, if he did, then he is innocent. If not, then he is guilty. I admit, that this is the hinge, on which this case turns. If that is a Constitutional, valid law, under which the prisoner acted, and if he rightly interpreted its scope and claims, then he should be acquitted—and, otherwise, convicted.

It is sometimes, said, that it is unreasonable to require a merely ministerial officer to know what is law. But every man is required, and most reasonably, too, to know what is law. Emphatically true is this in the case of him, who aspires to be, and who comes to be, a minister of the law. We, also, hear it said, that the bare existence of a law should be admitted to be presumptive evidence, that it is Constitutional—such strong presumptive evidence, that the officer may feel entirely free to act upon it. Our reply to this is—that if the law is immoral and wicked, its immorality and wickedness constitute presumptive evidence of its Unconstitutionality. Especially prompt and full should be the presumption, that the law is Unconstitutional, if its immorality and wickedness are flagrant, as in the case of a law for slavery. Not to take this ground is deeply to dishonor the Constitution. If an execution is put into the hands of the sheriff, for the purpose of having him levy on hogs, he may take it for granted, that all is right—for he knows

that hogs are property. But if a process is put into his hands, for the purpose of having him treat a human being as property, and reduce that human being to slavery, then he is bound to pause, and to enquire, whether the law for that process can possibly be a Constitutional, valid law. It is often said, too, that it is hard for an officer to be punished for his ignorance of the law. Yes—but is not his title to our sympathies far weaker than that of the victims of his ignorance? By means of this ignorance, a freeman of the County of Onondaga might be torn from his wife and children to spend his remaining years under the lash of the taskmaster upon a Southern plantation. It is insisted, however, that if an officer act in good faith, his good faith should acquit him of blame, and protect him from punishment. But there are many authorities to the contrary. I will refer to a few of them:

Says Justice M'Lean [Peter's Reports, x. 94]. "It would be a most dangerous principle to establish, that the acts of a ministerial officer, when done in good faith, however injurious to private rights, and unsupported by law, should afford no ground for legal redress." In the South Bend (Indiana) fugitive slave case, Justice M'Lean held "that all, who assisted in procuring, with the officer, that served, and the judge, that tried, the writ were trespassers, and liable to the plaintiff in damages * * * * that the discharge of the fugitives by the judge was void, and, consequently, can give no protection to those, who acted under it * * * * that the forms of law assumed afford no protection to any one." Justice Van Ness says [Johnson, xv. 155]: "Every tribunal, proceeding under special and limited powers, decides at its peril—and, hence, it is, that process issuing from a Court not having jurisdiction, is no protection to the Court, to the attorney, or the party, nor even to a ministerial officer, who innocently executes it. This is a stern and sacred principle of the common law, which requires to be steadily guarded and maintained."

Nor is it enough, that a judge or marshal can quote even an Act of Congress as authority for what he has done. Unless the Act is Constitutional, it affords no protection. Said Justice M'Lean, in a letter, which was extensively copied by the press, a year or two since: "An Unconstitutional Act of Congress imposes no obligations on a State or the people of a State; and may be resisted by an individual or a community. No one, I believe, will contradict this." If an Act of Congress direct the judge to direct the marshal to insult the people he meets, neither judge nor marshal can obey it with impunity. Emphatically unsheltered would they be by an Act of Congress, which commands them to enslave people—unless, indeed, such Act should prove to be Constitutional.

It must be remembered, that the officer is required to swear to support not an Act of Congress, but the Constitution.

I will, now, proceed to show, that the law, under which the prisoner acted,

is Unconstitutional, and that he is, therefore, a kidnapper. I will regard the law as intended to apply to slaves, whether it does, or does not, apply to any other class of persons.

My first position is, that the law is Unconstitutional, because it withholds the trial by jury.

The Constitution requires the trial by jury in all criminal prosecutions. Why does it? Because, in such prosecutions, the highest interests of the accused—character, liberty, life—are in peril. Hence, he is entitled to the advantage of a jury trial.

Now, I admit, that the prosecution for the recovery of a fugitive slave is but a civil prosecution. Nevertheless, it is a prosecution, which perils the liberty of the defendant—ay, his liberty for life. Liberty for life, did I say? Oh! this expresses the idea quite too feebly and inadequately. Manhood for life, I should have said. The convict in the State Prison is deprived of his liberty; but not of his manhood. His manhood survives; and is under the full protection of the laws. Should even the Governor of the State visit the State Prison, and lay but his little finger in violence and injustice upon the convict, he would soon be taught that he could not do so with legal impunity. But the prosecution for the recovery of a slave, if it goes against the defendant, sinks him into a chattel, and leaves him not a shred of his manhood, nor the least protection of law.

Manifestly, then, had Congress acted in the spirit of the Constitution, the law in question would have provided the trial by jury for persons claimed under it. *May* Congress, in enacting a law for the recovery of fugitive slaves, provide the trial by jury? All will admit, that it *may*. All will admit, that there is nothing in the Constitution to hinder it. Well, if it *may*, then it *must*—for, in such a case a *may* amounts to a *must*. No one will deny, that, if Congress would take upon itself to enact a law to carry out the Constitutional clause before us, it should enact just such a law, as it would be proper to enact, had the clause gone on, and ended with the following words: "And Congress shall enact a suitable law to carry out this clause." But who, I pray, can call a law *suitable*, which denies a jury to the man, who is on trial for more than his life? Yes, much more than his life—for liberty and manhood are much more than life.

Congress should have enacted, in this case, none but a reasonable law. A palpably unreasonable law, in this case, is an Unconstitutional law. I say not, that every unreasonable law is Unconstitutional;—for there may be unreasonable clauses in the Constitution—clauses calling for unreasonable laws. But this I do say—that, if there is a palpably unreasonable law, which the Constitution does not call for, then does its palpable unreasonableness make it Unconstitutional. We must take this ground, if we would honor reason. We must take this ground, if we would honor the Consti-

tution. I scarcely need add, that the gross unreasonableness of this law, in withholding the trial by jury, is entirely uncalled for by the Constitution.

I need say no more to show, that this withholding the trial by jury violates the spirit of the Constitution. I go on to show, that it violates its letter also.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." [VIIth Amendment of Constitution.] But the amount involved in a suit under the fugitive servant law will generally, if not always, exceed twenty dollars. Moreover, a suit under this law is a suit at common law. That it is such can be proved, in no wise, more conveniently and effectually than by quoting the very words of the S.C. of the U. S., which Lysander Spooner quotes for this purpose. I shall, in other parts of my argument, as well as this, avail myself of the help of this admirable logician, whose writings I warmly commend to all my hearers.

What is a suit? It is the prosecution of a claim. The Supreme Court has so defined it.

In *Cohens* vs. *Virginia*, the court say:

"What is a *suit?* We understand it to be the prosecution, or pursuit of some *claim*, demand, or request. In law language, it is the prosecution of some demand in a court of justice. 'The remedy for every species of wrong is,' says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived." The instruments whereby this remedy is obtained, are a diversity of *suits* and actions, which are defined by the Mirror to be 'the lawful demand of one's right;' or, as Bracton and Fleta express it, in the words of Justinian, '*jus prosequendi in judicio quod alicui debetur*,'—(the form of prosecuting in trial, or judgment, what is due to any one.) Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a right.

"To commence a suit, is to demand something by the institution of process in a course of justice; and to prosecute the suit, is, according to the common acceptation of language, to continue that demand."—6 *Wheaton* 407–8.

Well, is a suit the prosecution of such a claim, as is spoken of in the fugitive servant clause of the Constitution? It is, if that clause refers to slaves. The Supreme Court have said, that it is.

In the case of *Prigg* vs. *Pennsylvania*, the court say—

"He (the slave) shall be delivered up on *claim* of the party to whom such service or labor may be due. * * * A *claim* is to be made. What is a claim? It is in a just juridical sense, a demand of some matter, as of right, made by one person upon another, to do, or to forbear to do, some act or thing as a matter of duty. A more limited, but at the same time an equally expressive definition was given by Lord Dyer, as cited in Stowell *vs.* Zouch, Plowden 359; *and it is equally applicable to the present case;* that 'a claim is a challenge by a man of the propriety or ownership of a thing, which he has not in his possession, but which is wrongfully detained

from him.' The slave is to be delivered up on the claim."—16 *Peters* 614-15.

We have, now, gone far enough to learn, that a prosecution for the recovery of a fugitive slave is a suit. It remains to be learned, that it is a suit at "common law." Happily, we can learn this also, from the Supreme Court. That Court gives the meaning of "common law;" and gives it too, as the term is used in the Seventh Amendment of the Constitution:

"The phrase "common law,' found in this clause, is used in contradistinction to equity, and admiralty, and maritime jurisprudence. The Constitution had declared in the third article, 'that the judicial power shall extend to all cases in *law* and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority &c., and to all cases of admiralty and maritime jurisprudence. It is well known, that in civil causes, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that this distinction was present to the minds of the framers of the amendment. *By common law, they meant what the Constitution denominated in the third article, 'law;' not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered; or where, as in the admiralty, a mixture of public law, and of maritime law and equity was often found in the same suit.*" * * * *

"*In a just sense, the amendment, then, may be construed to embrace all suits which are not of equity and admiralty jurisprudence, whatever may be the peculiar form which they may asume to settle legal rights.*"—3 *Peters*, 446.

Perhaps, it will be said, that a jury trial is not due to the fugitive slave, because the value in controversy is not to be measured by dollars—or, in other words, because a man is not property. But the slaveholder surely is estopped from raising this objection;—for, whether the fugitive slave is, or is not, property, the slaveholder, nevertheles, claims him as such. Moreover, the Supreme Court of the U. S. has said, that the prosecution in this case is a prosecution for property—that "the right," in question, "is a right of property." [Peters XVI., 616.]

This denial of the right of trial by jury, together with the very extensive acquiescence in such denial, constitutes, in my esteem, one of the most significant of all the evidences of the progress of despotism in this country—one of the most significant of all the evidences of the growing contempt in this country for human rights. The trial by jury is the greatest defence of the people's rights—the strongest bulwark of their safety;—and, hence this denial of it should produce deep and wide-spread alarm.

"The trial by jury," says Justice Story, [3d Peters, 446] "is justly dear to the American people. It has always been an object of deep interest and

solicitude; and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated with and secured in every State Constitution in the Union. One of the strongest objections originally taken against the Constitution of the United States was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the 7th Amendment.

But it may be said, that the enactors of this law intended to deny the jury trial to the black race only. Alas, what an outraged race it is! In the words of the prophet Isaiah, "This is a people robbed and spoiled. They are all of them snared in holes, and they are hid in prison houses. They are for a prey, and none delivereth; for a spoil, and none saith, restore."—Such, doubtless, was the intention. Indeed, had the intention been to deny it to the white race also, scarcely would the lives of the enactors have been safe from the fury of that haughty race. This distinction between one portion of the American people and the other, although a stupendous crime, at which all should stand aghast, is, nevertheless, acquiesced in, and approved, by this superlatively guilty nation.

This law does, in its terms, apply to both whites and blacks, and exposes both to its penalties. What, however, if the public sentiment is such, as to confine its operation, for the present, to the blacks?—will not the denial of the right of trial by jury to one race of our citizens prepare the way for denying it to every other race of our citizens?—and will it not hasten the day, when this right shall be cloven down in every part of our land, and denied to every class of our people?

My second position is, that the law is Unconstitutional, because the Commissioner is not authorized by the Constitution to do what the law requires of him.

The law invests him with a judicial office—a judicial office in the eye, and in the meaning, of the Constitution. It requires him "to hear and determine the case."

But discerning men, who desire to uphold the law, and who see, that the investing of the commissioner with a judicial office, is necessarily fatal to the Constitutionality of the law, deny, that he is thus invested. They hold, that "the trial," "the adjudication," is to take place in the State, whence the fugitive escaped; and that, in this respect, the fugitive servant clause of the Constitution and the fugitive-from-justice clause of the Constitution are alike. But whilst the latter clause expressly provides, that the trial shall be in the State, whence the fugitive escaped, the former clause does not express such a provision, nor imply it, nor, in the remotest degree, hint at it. The fugitive servant is to be delivered up to the person, to whom, when his "claim" is examined, the servant is found to owe service: and, if the servant is a slave, then his master can sell him forthwith—and that, too, even

though half a dozen States intervene between the slave State in which he is arrested, and the slave State from which he fled. But the fugitive from justice is delivered up, not after it is ascertained, that he is guilty of the offence charged against him; but that it may, in another jurisdiction, be ascertained, whether he is guilty of it. The fugitive of the one clause is to be delivered up, because he has been tried and convicted. But the fugitive of the other, if, as is generally the case, he fled before conviction, is to be delivered up for trial—and is, therefore delivered up as an innocent person, and an innocent person he will remain, in the contemplation of law, until he has been tried and found guilty.

It is, nevertheless, held, that the trial of the fugitive servant in the State to which he has fled, is but a preliminary trial, and that his decisive trial is, according to the theory of the case, to be in a State Court, in the State from which he escaped. Our answer to this, is—First, that we see no propriety in calling that a preliminary trial, which is a comprehensive and conclusive one—a comprehensive and conclusive one so far as investigating and passing upon all the questions in the whole case can make it such. Second, that the trial under the Federal and paramount government, would operate as an estoppel to the institution of a suit in the State Court; or, at least, that the trial, under that government, could be effectually plead in bar on the trial in the State Court; for, surely, if it is competent for a Federal Court to decide, that A. B. is the slave of C. D., it cannot be competent for a State Court to reverse that decision. Third, that the law of 1850, claiming, as it does, that the Federal Government has exclusive jurisdiction of this case, does not presume, and could not presume, on any auxiliary or supplementary action, at the hands of another sovereignty. It must itself make a complete provision for the demands of the case. It, clearly, has no Constitutional right to rely on foreign agencies to do any part of its own work. Moreover, if there are, to-day, State laws, which authorize a further trial in this case, they may, nevertheless, be repealed tomorrow. And what goes still further to forbid all reliance on State action to complete that, which the Federal Government has left undone, is that, on the question, whether a person is a slave, there is, in reality, no adjudication in any of the slave States. For, in none of those States, is a person claimed to be a slave, unless he is also claimed to be a colored person; and, in none of those States, is a colored person allowed to call colored witnesses, where the other party is a white person. Now, that would be but a mockery of the adjudication of rights, where persons are forbidden to testify, because their hair is white, or their eyes are blue. But the mockery in that supposed case would not surpass the mockery in this actual case.

It was, however, unnecessary for me to go into this argument, if what

the S. C. of the U. S. has said on the point before us may be taken as conclusive authority.

"It is plain, then, that where a claim is made by the owner, out of possession, for the delivery of a slave, it must be made, if at all, against some other person; and inasmuch as the right is a right of property, capable of being recognized or asserted by proceedings before a court of justice, between parties adverse to each other, it constitutes, in the strictest sense, a *controversy* between the parties, and a *case* arising under the constitution of the United States; *within the express delegation of judicial power given by that instrument.*"—*Prigg vs. Pennsylvania*, 16 *Peters*, 616.

That Justice Story, who delivered this opinion of the court, had, ten years previously, expressed in his Commentaries [Vol. iii. 677] an opposite doctrine on this point, is neither material nor surprising. It is not material—for, besides, that his authority, as a judge of the S. C. of the U. S., is quite equal to his authority as a commentator, his authority, as a judge, is in this instance; fortified by that of his associate judges. And his self-contradiction, in this instance, is not surprising—for he has far more than matched it in this very Prigg case.

When writing that part of his Commentaries just referred to, Justice Story was, as a Northern man, endeavouring to convince the South, that she has nothing to complain of; and that it is "a delusive and mischievous notion, that the South has not, at all times, had its full share of benefits from the Union:" but when he came to write the Opinion of the Court in the Prigg case, he was a "Northern man with Southern principles." He was, then, aware, that the rule of interpretation laid down in his Commentaries [Vol. i. 387, and Vol. ii. 534], and so emphatically concurred in by Kent in his Commentaries [Vol. i. 243, 3d edition,] was fatal to a pro-slavery construction of the Constitution: and, hence, he put forth a new and entirely different rule of interpretation. In his Commentaries he says, that the interpreter must adhere to the letter of the Constitution, and that "nothing but the text itself was adopted by the people;"—but, in the Prigg case, he bids the interpreter quit the certainty of the letter to launch forth upon the uncertainty of history! Peters xvi, 610.

With few exceptions, and Justice Story was not one of them, the great men of our country have fallen down at the feet of the slave power, no matter how much of self-respect or self-consistency, the prostration has cost them.

No more need be said to show, that the law requires from the commissioner the work of a judge. The only other question, is whether the commissioner is a judge—a Constitutional judge.

The fact, that the commissioner is apppointed by a judge proves, that he is not a judge. Surely, surely, the Constitution recognizes no such monstrous doctrine, as that one judge can appoint another judge. The proceedings of the appointee might come up for review before the appointer;

and to prove the wisdom of his selection, as well as to save uninjured the reputation of his favorite, the appointer might be strongly tempted to make his review a very partial and tender one.

I readily admit, that a court may appoint officers to take testimony, and to perform acts in aid of a court. But, I cannot admit, that a court may appoint a court. The commissioner's court, however, is as truly, and indedently, and emphatically, a court, as is the S. C. of the U. States.

The fact, that the commissioner is paid in fees for his services does also, and does conclusively, prove, that he is not a Constitutional judge. The Constitutional judge receives a salary for his services. Is it said, that this point, at which the law of 1850 is Unconstitutional, is unimportant? It is, on the contrary, very important. The manifest object of the Constitution, in paying the judge a salary, is to secure his impartiality and uprightness. Were he paid in fees, he would be under temptation to favour plaintiffs—for he could not be ignorant, that plaintiffs are apt to select the court, which is known to favour plaintiffs, and are apt to multiply suits, if they can have such a court to take them to.

But it may be said, that the Constitution authorizes Congress to "vest the appointment of such inferior officers, as they think proper, in the courts of law." For the reasons already given, however, the commissioner cannot be one of these "inferior officers." The services of a judge are required of him; and no person can be a Constitutional judge, who receives his judgeship from a judge, or who receives his compensation in fees. Moreover, the commissioner cannot be one of these "inferior officers," for the reason, that he is not an inferior officer. Call him an inferior officer, who has concurrent jurisdiction with the judges of the S. C. of the U. S.?—and, that too, in a class of cases more important than any other class of cases, which can come before an earthly tribunal?—for, I hold, that there is no other class of cases so important, as that, in which the question is, whether a man shall be left upon the heights of manhood, or be cast down into the depths of brutehood and chatteihood. I doubt not, that the enactors of this law regarded the commissioner as an inferior officer. For, inasmuch as they took it for granted, that the law would bear upon negroes only—a race of men, for whose rights they had no more respect than for the rights of dogs—they saw not the rank and dignity of a judge in him, whom their law called to the office (in their eyes, very low office), of disposing of the fate of negroes. Again, can you call him an "inferior" officer, who, in another important respect also, is the equal of the judge of the S. C. of the U. S.?—he, as well as such judge, holding his office during good behavior, or, in other words, for life? For, if the commissioner is really a judge—a judge Constitutionally, as well as in the nature and services of his office—then, whatever else to the contrary, he does, by the paramount authority of

the Constitution, hold his office for life;—ay, and, by that same authority, he can, should the calls of kidnappers for his kidnapping services become infrequent, demand a salary, in lieu of his infrequent fees. Here is our commissioner Sabine, who issued the warrant for poor Jerry—his modesty may be all unconscious of the honor—nevertheless, if he will but know it he is, if a Constitutional officer at all, a U. S. judge for life, and entitled, thereby, to claim a salary for life. Again, is it fit to call him an "inferior" officer, who, not only, has the most important of all cases brought before him, but whose decision upon those cases is conclusive and final?

My third position is, that the law is Unconstitutional, because it offers a bribe

To say, that a law, which offers a bribe, is Constitutional, is to cast great reproach and insult upon the Constitution.

Now, that this law is guilty of bribery is too plain to need argument. Its bribery is open and shameless. In Bible language, it "declares its sin, as Sodom, and hides it not." And it is bribery, too, in behalf of the worst of causes and the worst of men. It is bribery for slavery against liberty. It is bribery for the slaveholder against the slave: for the rich against the poor: for the strong and influential against the weak and helpless. This law offers to the commissioner twice as much money, if he will go wrong, as if he will go right: twice as much, if he will favor the proud and oppressive, as if he will show mercy to the sad and crushed; twice as much, if he will decide for the rich plaintiff, as for the poor defendant.

Where, where, in all the wide world, can another statute be found so infamous and infernal, as this?

My fourth position is, that the law is Unconstitutional, because it allows the suits under it to be decided solely on affidavits.

These are suits at the common law: affidavits are unknown to the common law: and, yet, these suits are to be decided solely on affidavits!

A man is not suffered to lose his horse, or even his dog, on mere affidavits. How much less should he be suffered to lose himself on mere affidavits! What a gross outrage on human rights to authorize a magistrate to sweep them all away by the force of mere affidavits!—and how palpably does the law, which authorizes this gross outrage, violate the Constitution!

I will read an able authority to show how very inadequate and uncertain a means of arriving at the truth is an affidavit, compared with the presence of the witness, and his free examination by both parties.

Justice Livingston says: "The right of cross examining is invaluable, and not to be broken in upon. How often is testimony, which, when first delivered, appears conclusive and irrefragable, entirely frittered away by this process! So much so, that a witness well sifted, not unfrequently proves more against than in favor of the party, that produces him. If one eye witness be worth more than ten ear witnesses [Pluris est oculatus testis

anus quam auriti decem] a still higher value must be set on proofs made in presence of both parties, compared with exparte declarations. In one way, the whole truth comes out; in the other, no more than it may suit the witness or his friend to have disclosed. The not being under oath, although a serious objection, is not with me the greatest: because, admitting everything said to be true, so long as it is in the absence of one, and probably at the solicitation, of the other party, it should go for nothing." Johnson ii., 35.

My fifth position is, that the law is Unconstitutional, because it provides for disposing of the cases under it by exparte testimony.

The law provides for admitting testimony on the plaintiff's side only. It makes no provision whatever—not even by the slightest implication—for the reception of testimony, even rebutting testimony, from the defendant's side. Commissioner Morton of New York has been much blamed for refusing to hear testimony on the side of Horace Preston, whom he recently sent into slavery. Nevertheless, it must be admitted, that this refusal is fully justified by the law. It is in harmony with both its letter and spirit. Commissioner Morton was as good as the law. He showed what the law is.

This Unconstitutional feature of the law is all the more glaring from the fact, that the exparte testimony, for which the law provides, and which the law pronounces sufficient, is of the weakest kind—being mere affidavits.

I said, that the law makes no provision for receiving testimony on the defendant's side. Not only is this so, but it does, in effect, ay, and even expressly also, exclude testimony on his side. 1st. It does, in effect, exclude such testimony, by the "summary manner," in which the law requires the case to be disposed of. The plaintiff may take months to prepare for trial. But the defendant is not entitled to a moment. To the rich and strong and oppressive plaintiff the law accords all this advantage. But from the poor and helpless defendant the law withholds it. Toward that wronged and wretched one its heart is as hard and unyielding as adamant. 2d. It expressly excludes testimony on the defendant's side, by expressly excluding his testimony. But is not a defendant as worthy of belief as a plaintiff? Is not the oath of the servant as good as the oath of the master? Is not the oath of the ignorant man as good as the oath of the learned man? Is not the oath of the poor man as good as the oath of the rich man? What a distinction is this to set up in a republican and christian land!—a land of republican and christian equality!

"A case in law or equity," says the S. C. of the U. S., "consists of the right of one party, as well as the other." Wheaton vi, 379.

Lysander Spooner asks: What is this "right" which is at the same time "the right of one party, as well as of the other?" It cannot be a right to

the thing in controversy; because that can be the right of but one of them. The "right," therefore, that belongs to "one party as well as the other," can be nothing less than the equal right of each party to produce all the evidence naturally applicable to sustain his own claim, and defeat that of his adversary; to have that evidence weighed impartially by the tribunal that is to decide upon the facts proved by it; and then to have the law applicable to those facts applied to the determination of the controversy.

Is it said, that the commissioner may allow testimony on the defendant's side? He certainly cannot, without violating the spirit, tenor, and purpose of the law. What, however, if he could? No thanks to the law for it. The law does not oblige him to do so:—and if he does so, it is of his own mere favor and grace.

How does this trial of a man for his liberty by mere exparte testimony agree with the great Constitutional protection: "No man shall be deprived of his life, liberty, or property, without due process of law?" Perhaps, it will be said, that the slave is not a party to the Constitution; and that, hence, this great Constitutional protection is not vouchsafed to him. We will see, under another head, that the slave is a party to the Constitution, and that all, who were permanent inhabitants of this land, at the time the Constitution was adopted, were parties to it. Admit, however, that the slave is not a party to the Constitution, and is not entitled to protection under it. Why, however, should such admission exclude from this protection the person, who is claimed as a slave? The very thing to be proved is whether he is a slave: and, surely, therefore, this very thing should not be assumed. As the person arraigned for crime is to be held to be innocent, until he is proved to be guilty; so the person, arraigned as a slave, should be held to be a freeman, until he is proved to be a slave. Now, to assume, that the person, seized as a slave, is a slave; and, then, on the strength of this assumption, to deny him, when on trial, the safeguards, which the Constitution provides, is a glaring and revolting specimen of that circular logic, which is entitled to produce no conviction, save that of its own folly and absurdity.

My sixth position is, that the law is Unconstitutional, because it vests judicial power in State Courts.

It does this in the face of various decisions of the S. C. of the U. States and other courts. I will quote from a few of these decisions.

"If, then, it is a duty of Congress to vest the judicial power of the U. States, it is a duty to vest the whole of it. * * * Congress cannot vest any portion of the judicial power of the U. States, except in Courts ordained and established by itself. * * * Congress have legislated upon the supposition, that, in all the cases, to which the judicial powers of the U. States extended, they might rightfully vest exclusive jurisdiction in their own Courts." Wheaton 1: 330–337.

Chief Justice Spencer, in delivering the Opinion of the S. C. of the State

of N. York, concurs emphatically with the S. C. of the U. States in the case, which I have just quoted. Johnson xvii: 4.

"The State Courts are not ordained, nor established, by Congress, and are not amenable to that body. The judiciary of a State is a constituent part of another and an independent sovereignty, from which they receive their authority and support, whose laws they are bound to execute. But they are under no such obligations to the U. States, whose laws they are bound to obey as citizens, but not to execute as magistrates." Connecticut Reports vii: 243.

The law is grossly Unconstitutional in this respect, inasmuch as it makes the action of the State Court mandatory and conclusive upon the Federal Court on two of the three points to be established, and sufficient on the third point also, if but the Federal Court shall acquiesce in the sufficiency. Let it not be said, that the action of the Southern judge is ministerial rather than judicial. It is emphatically judicial. He is a judge in the case. He does not take testimony to be passed upon by, or to satisfy, the Northern judge; but to be passed upon by, and to satisfy himself; and his satisfaction is, as we have seen, sufficient and final on two of the three points in the case.

My seventh position is, that the law is Unconstitutional, because of its interference of the legislative with the judicial department of Government.

The law is guilty of this interference in enjoining "a summary manner" of trial, and in prescribing a poor kind and a small amount of evidence.

"The judicial is a branch of the government co-ordinate with the legislative and executive. Justice Story, speaking of the 3d Article of the Constitution, says: "It is the voice of the whole American people, solemnly declared, in establishing one great department of that government, which was, in many respects, national, and, in all, supreme." Wheaton 1: 328.

The legislature is to make the laws: but it does not follow, that it is authorized to control the judicial administration of them. What if the legislature has, hitherto, been allowed to encroach upon the judicial? It is not, therefore, to be allowed to continue its encroachments. Prescription cannot be justly claimed for them.

In no respect should the legislative be allowed to override the judicial—least of all, in respect to the kind and amount of the evidence—the evidence being so vital a part of the lawsuit. Again, if in one class of cases, the legislature may dictate to the judiciary to receive testimony on one side only, why may it not do so in cases of every class? And, if it may dictate so far, why may it not forbid all testimony?

Suppose Congress should be disposed to arm itself with despotic power, and should, to this end, enact laws in palpable violation of the Constitution. Suppose, farther, that in order to prevent the judiciary from declaring such laws Unconstitutional, it should enact, that the only testimony, on which the judiciary may declare a law Unconstitutional, is the confession of

the members of Congress, that they knew the law to be Unconstitutional, when they voted for it. I ask, would not that be an encroachment of the legislative upon the judicial? All would admit it. Nevertheless, would that liberty of the legislative with the judicial exceed the liberty, which has been taken in the present case?

Is it said, that the lawmaking power may regulate the judicial administration of the laws? But, if it may *regulate* it, it does not follow, that it may *annihilate* it. To *regulate* is one thing. To *annihilate* is another, and a very different thing. But for the legislative to claim the right to dispose, as it will, of the evidence in the case, is virtually to claim the right to *annihilate* the judicial administration of the laws.

It is high time, that the American judiciary had asserted its independence of the legislature, and its equality with it. It is high time, that it had set its foot down against the encroachments of the legislature. An independent, self-respecting, incorrupt, and incorruptible judiciary, is a nation's safety and glory. But a servile judiciary—a judiciary, which allows itself to be moulded at the will of the legislature, is a nation's curse and disgrace.

If we must part with the legislature or judiciary, it had better be the former. Instead of consenting to the virtual annihilation of the judiciary, we might rather be looking forward to the day, when, under a higher and holier civilization, the legislature, instead of the judiciary, may, as in the Jewish Theocracy, be dispensed with.

My eighth position is, that the law is Unconstitutional, because it requires no testimony.

I have shown, that the law provides, that the case may be wholly disposed of on affidavits:—and I have, also, shown, that it provides, that it may be wholly disposed of on exparte testimony—and, that too, of the weakest kind, mere affidavits. But I will, now, show, that the law provides, that the case may be wholly disposed of, without testimony of any kind. I asked, under my last head, why, if the legislature could require the judiciary to receive testimony on but one side, it might not require it to receive no testimony at all. But it turns out, that the legislative has already encroached to this extent upon the judicial.

This law provides, that the commissioner may dispose of the case wholly on the transcript laid before him. But the transcript and the record, from which it is copied, are utterly void, for the reason, that the State judge could have had no authority to act in the case—Congress not being able to vest judicial power in him.

These transcripts, which come up from the South, are of no more legal value than so many pieces of blank paper. As well may our State judges exercise their judicial powers in behalf of the Government of China, as in behalf of the Federal Government. In neither case could the exercise have

any legal effect. The proceedings before the State judge might be ever so full of perjury, and yet no prosecution for perjury could be sustained. The State judge, having no jurisdiction in the case, could not administer a valid and responsible oath.

My ninth position is, that the law is Unconstitutional, because it fixes the compensation for the loss of the servant at the same sum in all cases.

It cannot be pretended, that such extreme unreasonableness is demanded by the Constitution: and if it is not, then it makes the law Unconstitutional.

This invariable compensation is one thousand dollars. Is it a slave, worth two thousand dollars, whose escape is aided?—the master can get but one thousand dollars. Is it an aged and worn out slave, not worth ten dollars, whose escape is aided?—the master gets one thousand dollars. Is it an apprentice, whose escape is aided, and the remaining time of whose apprenticeship is not worth fifty dollars?—the master gets one thousand dollars. Is the person, whose escape is aided, one, who owes but a month's, or a week's, or a day's labor?—his employer gets one thousand dollars.

Is it said, that the Constitutional clause in question applies to slaves only? I answer, that, whether it does or does not, apply to slaves, it certainly applies to free laborers. Indeed, fugitive apprentices have been returned under this law. Daniel Webster, in his speech at Buffalo, May 22, 1851, says—"The Constitution was formed, established, and adopted in New York by your ancestors. It contained provisions for the security of those, who hold others by the right of service. It provided that, in case they escaped from such service, they should be returned. This was the common practice before. Slaves escaping from Virginia into Massachusetts were to be returned. In the North there had been a grand system of apprenticeship, to which this applied as well. This led to a clear, express, unmisunderstandable provision in the Constitution for the return of fugitives." I am aware of the claim, that this provision can apply only to slaves and apprentices, and not to hired persons. But the claim is without foundation. What, if it is contrary to statute law, or common law, or any and all usage, to deliver up a hired person? This avails nothing against the declaration of the Constitution. The Constitution was not shaped to run in the grooves of statute law, or common law, or any usage whatever. It is paramount to them all! And, if the Constitution provides, that the man, who owes but a day's labor, or but a sixpence, shall be delivered up, then, whatever else to the contrary, he must be delivered up.

But, perhaps, it will be said, that, vindictive, or exemplary, damages, or in more vulgar language, smart money, is due, in all cases, where the escape is aided. What? in addition to a fair compensation for the loss of the servant, and in addition, also, to the heavy penalties of the public prosecution?

Is it right to imprison a man for six months, and to make him pay two thousand dollars, besides costs, for no other offence than humanely helping a poor abused apprentice to escape from his cruel master?

Is it not a fact, however, that the courts are getting sick of this doctrine of smart money?--a doctrine, which, I believe, can be traced to no more honorable parentage than the infamous Jeffreys.

My tenth position is, that the law is Unconstitutional, because in the public, or criminal, prosecutions under it, it allows the court no wider range for fixing upon the appropriate penalty.

In every case of conviction, as well where the testimony is scanty, as where it is abundant; as well where the conviction is for the most remote, indirect, and minute agency, as where it is for direct, overt, and most comprehensive acts; and as well where it is for the lowest, as for the highest, grade of the offence; the penalty is fine *and* imprisonment--not fine *or* imprisonment; and the court may, of course, order the imprisonment to continue, until the fine is paid. It must be remembered, too, that, in no case, where the conviction is for offences specified in the law of 1793, can the fine be less than five hundred dollars;—for this is the invariable fine imposed by that law;--and the laws of 1793 and 1850 make but one law--the latter being but supplementary to the former. That, in such case, each law stands, and is in full force, so far as it is not contradicted by the other, is a principle with which all lawyers are familiar. Blackstone recognizes it in the third section of his first volume.

My eleventh position is, that the law is Unconstitutional, because it extends to matters entirely beyond and foreign to the Constitutional clause, which it purports to carry out.

For instance, the Constitutional clause requires only the delivering up of the fugitive:—but the law provides, that he may be taken back, at the expense of the nation, to the State or Territory, from which he escaped. The Constitution leaves the master to take back his servant, without help, or with the help of the neighbors and friends, whom he may have brought with him. But the law provides the master with a national guard to escort the servant, it may be, from Maine to Texas; and at an expense to "the treasury of the U. States" of thousands of dollars.

Again, the Constitutional clause provides for cases of escape to and from a State only:—but the law extends to escapes to and from Territories, and from the District of Columbia.

Is it said, that the Constitutional clause should be interpreted liberally? I answer, that every constitution and every law should be interpreted liberally in behalf of justice and liberty—but strictly against injustice and slavery.

Possibly, it may be argued on this occasion, that our Territories and the District of Columbia are, each of them, a State. I admit, that they are, in

the sense, in which the word is used by writers on the laws of nations : but I deny, that they are in the sense, in which the word is used in the Constitution.

Kent says, at page 424, vol. 1st of 7th Ed. of his Commentaries: "Neither the District, nor a Territory, is a State within the meaning of the Constitution, nor entitled to claim the privileges secured to the members of the Union. This has been so adjudged by the S. C. in the case of Hepburn and Dundas against Elizey, 2d Cranch 445, and also in the case of New Orleans against Winter, 1st Wheaton 91." In the latter of these cases, C. J. Marshall, who delivered the Opinion of the court, says: "Neither of them (that is the District of Columbia or a Territory) is a State, in the sense, in which that term is used in the Constitution." In the former case, C. J. Marshall, who delivered the Opinion of the court, says: "It becomes necessary to inquire, whether Columbia is a State in the sense of that instrument. The result of that examination is a conviction, that the members of the American Confederacy only are the States contemplated in the Constitution.

The House of Representatives is to be composed of members chosen by the people of the several States, and each State shall have, at least, one representative."

The Senate of the United States shall be composed of two Senators from each State.

Each State shall appoint for the election of the Executive a number of electors equal to its whole number of Senators and Representatives.

These clauses show, that the word State is used in the Constitution as designating a member of the Union, and excludes from the term the signification attached to it by writers on the laws of nations.

It was decided in the same case, that a citizen of the District of Columbia cannot maintain a suit in a Circuit Court of the U. States. And in the suit of N. Orleans against Winter, the Court says : "this opinion (respecting incompetency to maintain a suit, &c.) is retained."

My twelfth position is, that the law is Unconstitutional, because it recognizes the Constitutionality of slavery in the Territories.

There cannot be slavery in the Territories—for the Territories are under the exclusive control of Congress; and Congress is under the exclusive control of the Constitution; and the Constitution is such, that slavery can neither be set up, nor suffered, under it. The institutions of a Territory must harmonize with the Constitution. So far, as they are repugnant to it, they are destitute of legal force.

At the page referred to, under my last head, Kent says: "Congress have supreme power in the government of the Territories." C. J. Marshall says: "All admit the Constitutionality of a Territory." Wheaton iv. 422.

My thirteenth position is, that the law is Unconstitutional, because it recognizes the Constitutionality of slavery in the District of Columbia.

No intelligent person believes, that Congress has the right to set up slavery in the District of Columbia, or, indeed, any where else. It has been

well said: "Congress can no more make a slave than a king." Surely, the right to set up slavery cannot be derived from a Constitution, which declares that one of its objects is "to establish justice and to secure the blessings of liberty;" and which also declares, that "no person shall be deprived of life, liberty, or property, without due process of law"—meaning, as is manifest, judicial process. The consequences of conceding the right of Congress to set up slavery in the District of Columbia, would be numerous, startling, and revolting. If Congress has this right, then, according to the words of the Constitutional clause, which respects the District of Columbia, it has, also, the right to set up slavery in every place, and on every spot of ground, which the General Government has purchased, or may yet purchase, with the consent of the Legislature of a State. It may set up slavery, not only in the Forts of our State, as, for instance, in the Forts at Oswego and Buffalo, but in all the Post Offices and Court Houses belonging to the General Government. Chained, and whipped, and branded, and mutilated slaves may be employed in the Post Office of this city of Syracuse to receive and deliver letters and papers.

But, notwithstanding the notion, that Congress has the right to set up slavery in the District of Columbia, is confessedly preposterous, it is, nevertheless, claimed that the slavery, which pollutes that District, has a rightful and Constitutional existence. It is so claimed on the ground, that it is Virginia and Maryland slavery. But this claim is sheer nonsense. The laws of the States have no more power in the District than they have in Russia. The legislation of the District is vested exclusively in Congress; and slavery in the District exists simply by the force of Congressional legislation.—This exclusive vesting of such legislation was strenuously objected to, in some quarters, at the time of the adoption of the Constitution. In the Virginia Convention, which passed upon the Constitution, it was protested against by such men as Grayson, Mason, and Patrick Henry. Henry called the authority and power over the District given by the Constitution to Congress, "illimitable authority," "unlimited power." Indeed, that Convention went so far, as to propose an amendment to the Constitution limiting the power of Congress over the District "to such regulations, as respect the police and good government thereof." And it must be borne in mind, that it was before Virginia and Maryland ceded their respective portions of the District, that this amendment was rejected; and that, hence, their cessions were made in the light of the interpretation, which the American people did, by that rejection, put upon the clause of the Constitution, which respects the District of Columbia.

But, it is said, that Virginia and Maryland ceded the territory with the condition, that slavery should not be disturbed therein. In answer to this we say, that no such condition was expressed; and that, if it had been, it

would have availed nothing. The paramount words of the Constitution would have made the condition nugatory. Those words governed Virginia and Maryland in making, as well as Congress in accepting, the cessions. The Constitutional clause in question was the mould, and the only mould which could give form and features to the cessions. And that the cessions were made, as well as accepted, under the Constitution, was virtually acknowledged by both Virginia and Maryland;--for in the laws, by which they made the cessions, they declared, that they made them "in pursuance of "the Constitutional clause in question. It is true, that there is in the Virginia law a vague proviso—not touching, however, nor, as far as I can see, aiming to touch, the question of slavery. But for the reason I have already given—that is, for the reason of the controlling language of the Constitution—this proviso is entirely void; and what it means can, in no event, be of any possible consequence. But, in reality, it was not necessary for me to say one word on this point. For that part of the district, ceded by Virginia, has been retroceded, and is, again, a part of Virginia. And, inasmuch, as the retrocession took place before the fugitive servant law of 1850 was enacted, it follows, that the District of Columbia does, in the eye of this law, consist solely of the cession made by Maryland—a cession made without any proviso or reservation whatever. There is, then, not the least possible ground for claiming, that slavery in the district of Columbia is Constitutional;—and, hence, the fugitive servant law of 1850 is necessarily Unconstitutional.

Possibly, it will be said, that this law of 1850 does not refer to slaves but only to free laborers: and that, hence, as there are free laborers, as well in the District as in the States, the law is not rendered Unconstitutional by its mention of the District. To this objection I would reply: 1st. The clause in the Constitution does not mention the District; and, hence, the law had no right to mention it; and is Unconstitutional for having mentioned it. Moreover, the District, not being mentioned in the clause, the clause does not refer even to free laborers in the District. 2d. If the clause does not refer to slaves, then, as I have shown under a former head, its penalties are so enormous in all cases, as to render the law Unconstitutional. 3d. If the law does not refer to slaves, then, as I shall show, under a future head, the law, however Constitutional it may be, leaves the prisoner necessarily and nakedly a kidnapper.

It may, also, be said, that if the law is Unconstitutional in providing for escapes from the District, nevertheless, the whole law is not violated thereby, but remains in force, so far as it respects escapes to and from States.

It may be right, in ordinary cases, to retain so much of a law, as can operate Constitutionally; and to fling away only the remainder. But where, as in the present case, the Unconstitutional feature is one, that

outrages human rights, and insults the cause of freedom, there the honor of the Statute Book, and the safety and honor of man require the indignant flinging away of the whole law. We are to read this law, just as if it called on the marshal, in terms, to obey and serve a precept for enslaving freemen of the District of Columbia—and if freemen of the District, then, just as well, freemen of Massachusetts. But, if this plain and proper translation of this absurd and infamous law be adopted, what judge would, then, hesitate to turn his back upon the whole law?

Again, should a law be retained upon the Statute book, which requires the minister or executer of the law to do, and that, too, under a heavy penalty, what he will be Constitutionally, and severely punishable, for doing? Now, this law tells the marshal to seize for enslavement a freeman of the District of Columbia—and to do so, or pay one thousand dollars;—whilst, at the same time, a Constitutional law of the State of New York rings in his ears, that if he obeys this Unconstitutional law of Congress, he shall be fined and sent to State Prison.

I might, in my argument, have classed the Territories with the Districts, inasmuch as the marshal would be equally punishable for arresting, as slaves, fugitives from a Territory.

My fourteenth position is, that the law is Unconstitutional, because it undertakes to suspend the writ of Habeas Corpus.

I have read the argument, which the Attorney General of the U. S. made to persuade the President of the U. S., that the law is not Unconstitutional, in this respect. His reasons for concluding, that the law does not forbid the writ of Habeas Corpus (among which reasons are, 1st, that to forbid it would violate the Constitution; and 2d, that such violation should not be imputed to Congress!) are quite too flimsy for so high a functionary to employ.

What mean the two lines, at the close of the sixth section of this law—"And shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever?" If they do not mean to shut out the writ of Habeas Corpus, then what do they mean? The Attorney General says, that they "probably" mean only what the act of 1793 means, by declaring a certificate under that Act a sufficient warrant for the removal of a fugitive. But I wonder at his having the face to say so; for the two previous lines have this meaning. Of course, then, the two last lines mean something else. If they do not, then they are mere surplusage: and the imputation of surplusage to a law must be avoided, if possible. What, however, is this something else, if it is not the suspension of the writ of Habeas Corpus?

But, is it a violent supposition, that a law, which disposes of one's right to his liberty for life—to his manhood for life—"in a summary manner," by

exparte testimony, and even by no testimony—I ask, is it a violent supposition, that such a law would not stop short of suspending the Habeas Corpus, in order to carry out its despotism?

To say the least, it is not certain, that this law does not deny the habeas corpus. Many able judges and lawyers have no doubt, that it does. Even the President of the United States had the suspicion, that it does—a suspicion so strong, that it required the Attorney General of the United States to remove it. Would it be strange, then, if, in such circumstances, there should be found, here and there, and now and then, a Judge ready to refuse this writ, and to suffer his fellow man to be plunged into slavery, without further investigation? Now, if a law is so framed, as to make it but uncertain, in the eyes of many able lawyers and judges, whether it preserves the writ of habeas corpus, it should be held to be Unconstitutional and void for uncertainty. There should be no suffering of uncertainty in regard to the preservation of that writ, which Blackstone so well calls "the most celebrated writ of England and the chief bulwark of the Constitution." Is there a law, which makes it uncertain whether a particular crime is to be punished by fine or imprisonment? Who would deny, that such a law is void for uncertainty? But why is such a law void any more than a law, which leaves it uncertain whether it acknowledges or denies the great writ of Habeas Corpus?

It is sometimes said, that we are not to be concerned to have this law declared Unconstitutional, even if it does forbid the writ of Habeas Corpus; for the Constitution, being paramount, will prevail against it at this Unconstitutional point. But, if this is a good reason for not declaring this law Unconstitutional, an equally good reason is it for not declaring any law Unconstitutional.

My fifteenth position is, that the law is Unconstitutional, for the reason, that Congress has no right to legislate upon the subject.

The Constitutional clause respecting fugitives from service was taken from the Ordinance of 1787. No one pretends, that, as a part of the Ordinance, it conferred any power on the Government. Why, then, should it be regarded as standing in a different relation in the Constitution?

This clause is found in the Constitution, in connection with three clauses, which were taken from the Articles of Confederation. No one pretends, that these three clauses conferred any power on the Government. All four of the clauses [article 4, sections 1 and 2,] are clauses of compact between the States, and they depend for their observance solely on the good faith of the States. Indeed, the Ordinance of '87 does itself call this clause a clause of compact. Its words concerning its six articles, of which this is one, are, that they shall be "a compact between the original States and the people and States in the said Territory, and forever remain unalterable, except by common consent."

Nathan Dane, of Massachusetts, framed the Ordinance of '87. Where did he find this provision respecting fugitive servants? He copied it from an old clause of compact—as old as 1642—between Massachusetts and the other Colonies around her.

On one of these four clauses of the Constitution, Congress has the right to legislate, for that clause contains an express grant of power to legislate. That such grant of power is lacking in the three other clauses, implies, irresistibly, that upon them Congress has no right to legislate. Is it said, that such grant is to be inferred in the case of the three clauses? Then, might it have been inferred in the case of the other clause also; and then the expression of it in that case is mere surplusage; and so, also, in that case, is the expression of such power, at the close of the 9th section of the 1st article of the Constitution.

It can be seen, at a glance, that, in the case of this clause, where power to legislate is given to Congress, it is in the very nature of the case indispensable, that such power should be given. But not so in the case of the three other clauses. In this case, where power to legislate is granted to Congress, State legislation would not suffice. There must be national legislation in this case, for it would not be competent for a State to direct in what manner its own public acts, records and judicial proceedings should be authenticated in another State. Each State (the rule of evidence being *lex loci*) might require a different mode of authentication. Hence, there must be a uniform mode of authentication in all of the States—that is, a mode determined by Congress. The necessity for Congressional legislation, in the case of this clause, is the reason, in the judgment of C. J. Hornblower, why this clause was put in a section by itself, and not in the same section with the three other clauses. [State of New Jersey *vs.* Sheriff of Burlington, 1836.]

But Congress has legislated, not only in regard to the clause, in which it has the right to legislate, but in regard to two of the other three clauses. Why, then, in the name of consistency, has it not legislated in regard to the remaining clause also—the clause assuring the citizens of each State of their rights in the several States? The only answer is, that the slave power tramples upon this clause, and forbids Congress to give force to it.

It is only, however, in the case of the fugitive servant clause, that Congress claims, that any one of these four clauses is to be carried out by other than State action. The law of Congress, in the case of the clause respecting fugitives from justice, is, indeed, a usurpation of power. Nevertheless, as it virtually disclaims all right on the part of the Federal Government, and virtually recognizes all right on the part of the State Government, to do what the clause requires to be done, the usurpation is not so much to be regretted.

When, in the Convention, which framed the Constitution, it was proposed

to insert a clause respecting fugitive slaves, the proposition was to have them "delivered up like criminals"—that is, by State action. [Madison Papers 111: 1447.] Not one line, whether of public or of private records, has ever been produced to show, that in 1787, when the Constitution was framed, or that in 1789, when it was adopted, any person believed, that the clause contains a grant of power, or is any thing else than a compact between the States.

I repeat what I have said: these four clauses (and the fugitive servant clause as much as the others) bind the good faith of the States; but, in no event, do they impose any obligations on the General Government, save to the extent of the special grant in the case of one of the clauses. If the States are guilty of delinquency in respect to these clauses, I know of no remedy for it in the hands of the General Government. That Federal power may be used to supply the delinquencies on the part of the States, is a doctrine leading directly to centralization, consolidation, and the subversion of the rights of the States.

Both of the fugitive-clauses require a delivering up. Now, Congress admits, that the delivering up, in one case, is to be by State action. Why then, should it deny, that, in the other also, it is to be by State action There is not one reason for this distinction; and but one shadow of a reason for it. This shadow of a reason is the prohibition contained in the clause. But this prohibition upon the State to enact a law, discharging the fugitive, is a prohibition of State action, at one point only. Prohibition, however, at one point, so far from implying prohibition at every other point, implies permission at every other point: *Exceptio probat regulam* is a maxim, which applies in this case. The prohibition on the State to legislate or act, in one respect, implies the right of the State to legislate or act, in every other respect. This prohibition is precisely analogous to the prohibition upon the States to pass laws impairing the obligation of contracts. But none claim, that the prohibition, in the latter case, implies, that the State may not legislate at all, in regard to contracts. It implies the reverse Whatever extent of State action, however, the prohibition, in either case may imply, certain it is, that, in neither case, does it imply the right, least of all the exclusive right, of the Federal Government to act in the premises.

But it is held, that the great questions connected with slavery are all settled by decisions of the S. C. of the U. S.—that they are fully and finally adjudicated—and are never more to be disturbed. I respect precedent. I would, to every reasonable extent, bow to it. I cheerfully admit the general proposition, that the decisions of the supreme judiciary are to be regarded

as conclusive —at least, for many years. But I deny, that decisions of any, even the highest, earthly tribunal against fundamental, unchangeable, eternal human rights are ever, even for one moment, to be regarded as final and unalterable. Most emphatically true is this, when such decisions are in favor of slavery, and of sweeping away (as slavery does,) all human rights' and converting immortal, God-like man into a brute and a thing. If the S. C. of the U. S. shall, at any time, feel itself bound, by its view of the requirements of the Constitution, to decide for slavery and for the annihilation of human rights, it is, to say the least, to decide so, very reluctantly; and it is, moreover, ever after its decision, to welcome every attempt, however speedily or frequently made, to inspire it with such views of the Constitution, as shall enable it, conscientiously, to reverse its decision.

But I should be disingenuous to stop here, and give no further reason against the conclusiveness of pro-slavery decisions of the S. C. of the U. States. Such decisions are, in my esteem, entitled to very little respect. Why should they be, when a majority of its members (oh shame to my country!) are themselves slaveholders?—do themselves defend the traffic in human flesh? Who would respect the decision of a Court against the Constitutionality of the "Maine law," were a majority of its members distillers? Not only is it true, that slaveholding blunts and warps the sense of natural justice; but it is also true, that, where slavery is the subject to be adjudicated, slaveholders will not do as well, as they might, even with that blunted and warped sense. They will perversely refuse to follow the guides, and submit themselves to the principles, of enlightened jurisprudence. A rare man, like John Marshall, may, to a great extent, rise above the influence of his circumstances and relations.

But, to return from this digression—where is it, that the S. C. has disposed of these great questions? In the Prigg case, is the reply. That is the case [Peters xvi.] relied on to sustain the proslavery constructions of the Constitution, and, especially, the position, that Congress has exclusive right to legislate on the fugitive servant clause of the Constitution. We will examine this case; and, I think, we shall find, that quite too much has been claimed for it; and that it settles very little, if indeed any, of all, that it is supposed to settle.

Edward Prigg, of Maryland, was indicted and convicted in Pennsylvania. The case was brought by writ of error before the S. C. of the U. S. The record set forth the special verdict of the jury, and it also set forth the statute, which Prigg was convicted of violating. The statute is aimed against those, who shall remove a person from Pennsylvania, with "the intention and design of selling and disposing of, or of causing to be sold, or of keeping and detaining * * * * as a slave" the person so removed. But of this vital part of the statute the verdict says nothing. Justice Story

in delivering the Opinion of the Court, says: "It (the statute) purports to punish, as a public offence against that State the very act of seizing and removing a slave by his master." "He adds: "The special verdict finds this fact; and the State Courts have rendered judgment against the plaintiff in error upon that verdict." But what Justice Story says of "the statute is not true. It is for doing more than he says, that the statute purports to punish, &c."

We proceed in our examination of the case. The only question before the Court was, whether Prigg could seize and remove the person, without the aid of any legislation, whether of Congress, or of a State; or, in other words, without any process; or, in still other words, whether the fugitive servant clause is self-executing. On this only question before it, the Court stood eight for reversal, and one (Justice M'Lean) for affirmance. But, with the exception of Justice Baldwin, who confined himself to the case before it, the Court formally discussed, and formally passed on, other questions. Eight members of the Court held, that Congress may legislate on the clause in question. Five members of the Court (Justice M'Lean one of them) held that Congress has exclusive legislation in the case. Three members of the Court held, that the States have concurrent legislation. One of the three (C. J. Taney) said: "It, (the fugitive servant clause) contains no words prohibiting the several States from passing laws to enforce this right. They are, in express terms, forbidden to make any regulation, that shall impair it. But there the prohibition stops. And, according to the settled rules of construction for all written instruments, the prohibition being confined to laws injurious to the right, the power to pass laws to support and enforce it is necessarily implied."

In his speech in the Senate, March 7th 1850, Daniel Webster said: "I have always thought, that the Constitution addressed itself to the Legislatures of the States themselves, or to the States themselves. I have always been of the opinion that it was an injunction upon the States themselves. * * * The State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained it, and I entertain it now."

Chancellor Walworth said: "I have looked in vain among the delegated powers of Congress for authority to legislate upon the subject." Wendell xiv., 522. The Chancellor spoke soundly—nevertheless, unfortunately for himself, as it turned out, when a judge of the S. C. of the U. S. was to be selected from the State of New York: and Judge Nelson, in the same case, in another Court (Wendell xii. 314), spoke unsoundly—though fortunately for himself, as it turned out, when this selection was to be made.

But the Opinion of the Court in the Prigg case should, to be consistent with itself, admit, that the States can legislate upon the clause in question. "None (no doubt)," says the Opinion, "is entertained by this Court, that

State magistrates may, if they choose, exercise that 'authority'"---i.e. delivering up slaves. Peters xvi. 622. But, "if State magistrates may, if they choose," act upon this clause, why, then, may not State Legislatures, also act upon it, "if they choose?" But the Court involved itself in utter absurdity, at this point. If the Federal Government only has jurisdiction of this clause, and so the Court (if the Court it was) maintains, then neither a State Legislature, nor a State magistrate, can act upon it. The Federal Government, in that case, can no more look for action, or tolerate action, beyond its own sovereignty than could the State of New York permit magistrates on the Canada side of the frontier to participate in its judicial concerns. The judicial power of the Federal Government is vested in Federal officers only: and that Government can no more suffer such power to be shared in by judicial officers of another sovereignty than by military officers or private citizens."

Justice Story delivered the Opinion of the Court in the Prigg case. He discussed the extraneous questions as if they were all pertinent and material to the case; but if they were all pertinent and material to it, then I see not with what propriety it is held, that the judgment of Pennsylvania was reversed. For, not counting Justice McLean, there were but four of the nine Judges in favor of the position, that Congress only can legislate on the clause in question. On the other hand, if these questions, which I call extraneous, were not pertinent and material, then it follows, that the Prigg case, if indeed it has decided any thing, has, at the most, decided but one thing—the one thing, that the fugitive servant clause is self-executing, and may be carried into effect without the help of process. Whatever was said by the Court on other points was mere *obiter dicta*, and was, to no extent, an adjudication.

There is no right, then, to say, that the Prigg case decided, that Congress has exclusive or even concurrent legislation on the fugitive servant clause, and no right to say, that it decided the law of 1793 to be Constitutional. But, even had it decided the law of 1793 to be Constitutional, it would not follow, that the law of 1850 is thereby decided to be Constitutional; for the law of 1850 is far from being identical, either in its principles or provisions, with the law of 1793. The law of 1850 provides, that the fugitive be taken before a Federal magistrate only; but the law of 1793 provides, that he be taken before either a Federal or a State magistrate.

Perhaps, it will be said, that, in the case of Jones against Van Zandt, (Howard v. 216,) the Supreme Court of the United States decided the law of 1793 to be Constitutional. But the point was not argued nor examined. The Court, in common with the whole country, was under the mistaken impression, that the point had been decided in the Prigg case; and hence, the Court referred to it as a settled adjudication. Of course, no authority nor

precedent can grow out of a mistake, be the mistake in the Prigg case, or Van Zandt case, or both. But this mistake of the Court in the Van Zandt case should effectually warn all Courts of the danger of suffering their Opinions to range beyond the limits of the case before them.

Judge Woodbury, in declaring the Opinion of the Court in the Van Zandt case, says: "This Court has already, after much deliberation, decided, that the act of February 12th, 1793, was not repugnant to the Constitution. The reasons for their Opinion are fully explained by Justice Story in Prigg *vs.* Penn., Peters xvi. 611." Again, Justice W. says: "That this act is not repugnant to the Constitution must be considered, as among the settled adjudications."

My sixteenth position is, that the fugitive servant act of 1850 *is Unconstitutional, because the Constitution is anti-slavery, and not pro-slavery.*

But, after all, is this act pro-slavery? Is it an act for reducing persons to slavery? I admit, that it is not such upon the face of it. I admit, that it does not speak expressly and literally of slavery. Nay, I will, for the sake of the argument, admit, that the act is in no wise pro-slavery, and that, so far as slavery is concerned, it is Constitutional and valid law. I will go still farther and say, that it is, in all respects, good and sound law. But how can such admissions help the prisoner? It would be fatal to him to use them, for he confessedly treated the act as an act for slavery; and, under it, he sought to sink poor Jerry into slavery. Hence, if the act is not an act for slavery, the prisoner stands before the Court, necessarily and nakedly, a kidnapper.

In order, then, for the prisoner to make even a show, even a beginning of defence, he is compelled to assume, that the act of Congress, which he was employed in enforcing, is an act for plunging persons into slavery; and moreover, that the act is authorized by the Constitution.

I have now, therefore, come to that stage in my argument, in which I shall undertake to show that the Federal Constitution sanctions no slavery, permits no slavery, knows no slavery. If I succeed in showing this, it, of course, follows that, whether my previous arguments are, or are not, sound, the fugitive servant act of 1850 is Unconstitutional and void.

[Mr. Smith spent a couple of hours in arguing the Unconstitutionality of slavery. He frequently quoted from his own published writings, and from those of Lysander Spooner. Whoever will be at the pains to read the little pamphlet entitled "Gerrit Smith's Constitutional Argument," and the large and incomparably more valuable pamphlet entitled "The Unconstitutionality of Slavery, by Lysander Spooner," will conceive a sufficiently just idea of the course and character of Mr. Smith's argument under this head.*]

* Mr. Spooner's pamphlet is for sale by Frederick Douglass, of Rochester, and by Bela Marsh, of Boston.

My seventeenth and last position is, that the law is Unconstitutional, because the Constitutional clause, which it purports to carry out, does not refer to slaves.

Perhaps, it will be said, that the Supreme Court has decided, that this clause does refer to slaves. But if it has, then, for the reasons, which I gave under a former head, the decision should be kept ever open for reversal, and the Court should ever welcome every attempt to convince it, that such decision can, without violating the Constitution, be made to give place to a decision in harmony with everlasting righteousness.

When, however, did the Supreme Court decide, that this clause refers to slaves? When did the question ever come before that tribunal? Not in the Prigg case, nor in the Van Zandt case. In both these cases it was assumed, that the clause does refer to slaves.

If I succeeded, under my last head, in showing, that American slavery is Unconstitutional, then of course "the laws" referred to in this clause cannot be laws for slavery; for if the Constitution is anti-slavery, then there cannot be pro-slavery laws—then pro-slavery enactments cannot be laws. But I will admit, for the sake of the argument, that I failed to prove the Constitution to be anti-slavery. Nevertheless, the clause, which we are about to examine, is not to be regarded as pro-slavery, because some other, or even because every other, part of the Constitution is pro-slavery.

Had there been no slavery in the country, at the time the Constitution was adopted, and no prospect of there ever being any, this clause would still have been proper. Apprentices have been reclaimed under it, and fugitives from the various classes of free laborers can be. Indeed, the clause must be taken as referring to such. It cannot refer to slaves, for the fugitives in the clause are capable of owing, and slaves can no more owe than horses, or horse blocks. In the eye of the slave code, the slave is a mere chattel.

Another reason why the fugitive in this clause is not a slave, is, that he is there described as a person; and "no person," says the Constitution, "shall be deprived of life, liberty, or property, without due process of law."

Another reason why the fugitive in this clause is not a slave, is, because he is held to service under the laws. But the laws no more hold a slave than an ox to labor. They admit and defend the owner's right of property in both; but they no more compel the slave than the ox to perform labor.—A person held to labor by the laws, is, surely, no definition of a slave.

Are the "laws" referred to in the clause only those laws, which were in existence at the time the Constitution was adopted, or do they include the laws, which might be enacted thereafter? Are they only the then existing laws? Then does analogy require us to interpret "State" in the clause as only a then existing State; and hence, here would be two reasons for concluding, that Jerry could not possibly come within the scope of this clause,

for neither the laws of Missouri, nor the State of Missouri, were in existence, at the time the Constitution was adopted. But do "the laws" referred to mean future as well as present laws, and are they laws for slavery? Then it follows, that our fathers bound themselves and their posterity to treat, as slaves, whomsoever any of the States might thereafter enact to be slaves—white or black, good or bad, high or low. Then it follows, that we should be bound to seize and replunge into slavery the scores of white families, who have recently removed from this State to Virginia, should that State enact, that they are slaves, and should they, therefore, fly back to this State.

Another reason, why this clause of the Constitution cannot refer to slaves, is, that the Constitutional provision for the free exercise of religion forbids such reference. This provision does not mean every kind of religion. There is no room under it for a polygamy-religion—no room under it for a religion, which burns the wife to honor the memory of the husband. It means but the Christian religion—the religion of those, who adopted the Constitution. The mention of Sunday in the Constitution indicates this. What, then, is this free exercise of religion, which the Constitution secures to us? Is it liberty to hold what creed we will, and join what Church we will, and observe what forms of worship we will? It is infinitely more than this. It is liberty to be and do what Jesus Christ would have us be and do. It is, in a word, liberty to be and do what Jesus Christ, were he again on the earth, would again set us the example of being and doing. Would He chase down poor innocent men and women to enslave them? Horrid supposition! Blasphemous thought! But why more horrid, why more blasphemous, than that His disciples should do so? If the Constitution requires them to join in that diabolical chase, then it is idle to say, that the Constitution secures to them the free exercise of religion.

And now, are we willing to believe, that our fathers intended to make this whole land the slaveholders' hunting ground, and to require "all good citizens to aid and assist" in running down the innocent human prey? Are we willing to believe, that they were the most merciless of all men? We are wont to contrast the Christian with the Jewish code. Nevertheless, under the latter, the escaping servant was not to be returned to his master, but was allowed to choose his residence. Even the Spaniards were so merciful, as to exempt from reclamation those fugitive Moorish slaves, who were able to reach Grenada. But, under the pro-slavery construction of the Constitution, not so much as a Grenada is left to the American slave. Under that construction, it is held, that he may be pursued throughout our own nation, and into foreign nations also. In the year 1826, our Government had the audacity to propose, that the British and Mexican Governments should surrender the American slaves, who had fled to Canada and Mexico.

This clause of the Constitution is called one of the compromises of the Constitution; but there is not the slightest reason for calling it such. No

reference whatever was made to the subject of this clause in any of the plans of a Constitution, which were submitted to the Convention. Indeed, it was not until twenty days before the close of the Convention, that this subject was introduced into it.

I said, that there is not the slightest reason for calling this clause a compromise. I meant, that there is not for pro-slavery men to call it such.—There is, however, abundant reason, why anti-slavery men should give it this name. When the clause was first proposed, it had the word "slave" in it; but in that shape it was so strenuously opposed, that it was withdrawn. The next day, it was proposed again, but with the word "slave" struck out; and then every member of the Convention unhesitatingly acquiesced in it. The anti-slavery members of the Convention (and nearly all of the members were anti-slavery,) were willing, that the slaveholders should get from the clause, in its amended form, what they could get from it; and certain it is, that, neither in the light of the letter, nor history, of the clause, are they entitled to get aught from it.

Again—To call this clause a pro-slavery compromise, is to do so at the expense of stigmatizing the Convention with the rankest and most glaring hypocrisy; for we must remember, that it was not until after the adoption of this clause, that the Convention struck out from their agreed-upon-form of Constitution the word "servitude," and unanimously inserted in its place the word "service"—and this, too, for the avowed reason, that "the former expresses the condition of slaves, and the latter the obligations of free persons."

My argument is ended. How came this grossly Unconstitutional law to be enacted? How came such able lawyers as Clay and Webster to favor its enactment? The solution is, that they acted in the case, not as lawyers, but as politicians. They had a compromise to make; and make it they must, and make it they did, at whatever expense to an oppressed and outraged race, and at whatever expense to their reputation as lawyers. Even a very great lawyer, when he has consented to merge the lawyer in the politician, can make sad havoc of law. For instance, Daniel Webster pronounced the escape of poor Shadrach of Boston, a treasonable act—a levying of war against the United States!—and that, too, though no weapon was seen, and no one hurt, and no one threatened with hurt! Again, in the Christiana case, the District Attorney was especially instructed by the Department of State "to ascertain whether the facts would make out the crime of treason against the United States, and, if so, to take prompt measures to secure all concerned for trial for that offence!"

I said, that my argument is ended. I need not consume more time in showing, that our fathers, who created the American Government, created it "to establish justice and secure the blessings of liberty," and not to be a gigantic slave-catcher, and to expend in slave-catching the contributions

which honest toil is compelled to make to the national treasury. I need not add, that their willingness to have their Government and treasury put to such cruel and shameless and infamous uses, proves, that the American people have fallen down into very low depths of degeneracy and depravity.

This argument, with which I have so heavily taxed the patience of the Court, adds another to the very numerous efforts I have, during the last fifteen or twenty years, put forth to arrest the ruinous career of this nation. But, in all probability, it is now too late for any poor efforts of mine, or even for the best efforts of the best men, to have any effect in arousing and saving this insane and guilty nation. In all probability, it will continue to drive on, heedless of warning and entreaty, until engulfed in destruction.—There is but too much reason to fear, that the slave power has already achieved a fatal and final conquest over the understanding and heart of the American people. The American people have become so familiar with the stupendous crimes of that power, and so debauched by their long course of acquiescence in them, as no longer to be shocked by them, and, indeed, as no longer to discern them. They not only assent to this hideous and Heaven-defying law for chasing down and enslaving Heaven's unoffending and guiltless poor, but they bestow most favor and honor upon those, who are most the champions and upholders of this law. And such blindness has come upon them, that of the still more cruel and murderous laws enacted, or about to be enacted, by this, that and the other State, they do not so much as take notice. The decision of the Supreme Court of the United States in the Prigg case, startled the nation. Not only, however, is the nation now reconciled to it, but it is regardless, and probably unaware, of the far greater lengths, which that Court has gone in its devotions to the bloody Moloch of slavery. Scarcely eighteen months have passed away, since that Court decided, in the case of Strader and others against Graham, that a State is at liberty to make slaves of freemen, and "has an undoubted right to determine the *status*, or domestic and social condition of the person domiciled within its territory." Pro-slavery decisions and pro-slavery laws are weaving a strong net-work around the American people, which will leave them bound and helpless at the feet of the slave power. Nevertheless, they remain entirely unconscious of the encroachments upon their rights—entirely unconscious of the invasions of those great and immutable principles, on which all their rights are founded.

This doctrine of the Supreme Court of the United States, that rights the most cherished and sacred, the most essential and vital, stand but in the concessions and uncertainties of human legislation, is a legitimate outgrowth of slavery. This doctrine, in other words, is, that there are no natural rights. Slavery is a war upon nature, and is the devourer of the rights of nature; and wherever, as in this country, it is in the ascendant, all rights

and all interests, conventional as well as natural, accommodate themselves to its demands. The doctrine of natural rights, if it can live at all in a country, which cherishes slavery, nevertheless cannot have an extensively influential and practical existence in it. In this country, it is reduced to a mere theory or speculation; and never can it be more, so long, as we admit that enactments for the destruction of natural rights are laws—valid, obligatory laws.

It may be too late for America to learn the lesson--nevertheless, it is a lesson of truth, and of unspeakably important truth, that no people can be secure in their rights any further than they believe, that their rights are derived from God; nor any further than they believe, that laws to be valid and obligatory, must be laws for the protection, instead of the destruction, of rights.

ARGUMENT OF S. D. DILLAYE.

If your Honor please, I shall neither attempt, sir, to imitate the eloquence nor expect to display the ability of the gentleman who has just taken his seat.

The question to be discussed is, whether an officer, pursuing his duty under the laws of the United States, and following out solely those directions and obligations imposed upon him, is, by doing so, to subject himself to the doom and fate of a felon.

The prisoner at the bar is arraigned for trial under an indictment charging him with the crime of kidnapping according to the provisions of the act of 1840.

The prisoner does not deny the taking of the man Jerry, as charged in the indictment; but he alleges that he is an officer of the Government of the United States, and was at the time of the taking of said Jerry; "that he had lawful authority to forcibly seize and confine said Jerry," according to the laws of the United States.

The legality of this authority is, if your Honor please, the question now before you for adjudication.

It is not disputed that a law was passed in 1793, which in its provisions made regulations for the capture and retaking of fugitives from service—nor that that law had immediately in view a direct and speedy remedy for the recapture of slaves escaping from one State into another, under that provision of the Federal Constitution which provides that "no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

It is well known that the law of 1793 failed, mainly because it imposed the duty of trying or certifying, whether the individual claimed as a slave was *prima facie* a slave, upon Justices of the Peace not legitimately and legally compelled to sit in judgment; for it was early decided in State tribunals, that the Constitution afforded no authority for the vesting of judicial power in officers either appointed by the State or by the General Government for other than judicial purposes; and these State decisions upon the Constitution were followed up in 1816 by the case of Martin vs. Hunter, 1 Wheaton R. 330, in which the Supreme Court of the United States decided "that Congress could not vest any portion of the judicial power of the United States except in Courts ordained and established by itself;" that to

ordain and establish, meant to create ; and that as a consequence Congress could not vest any new jurisdiction in State Courts—but that the whole judicial power of the United States should be, at all times, vested in an original or appellate form, in some Courts created under its authority.

That State Courts were not so created, was too palpable for an argument, And thus this law, made to depend for its force upon officers not compelled to act, failed to accomplish the end for which it was enacted. Not only this, but State Legislatures absolutely prohibited State officers from carrying the law into effect.

The South, as we shall claim, having constitutional rights which were violated, demanded the amendment of the laws of 1793, and that demand resulted in the passage by both Houses of Congress of the act known as the Fugitive Slave Law.

It is, if your Honor please, by virtue of this law that the prisoner at the bar, in an official capacity, by direction and authority of a warrant issued to him by a regularly appointed commissioner of the United States Court, seized the man Jerry as a fugitive from service and labor, to deliver him up to the party claiming his services.

And the main question now to be argued is, whether that Fugitive Slave Law is constitutional, and can confer lawful authority, by the exercise of its provisions, upon the prisoner at the bar, for the execution of the process by which Jerry was arrested.

I shall attempt, sir, to show you what I believe is admitted by 99 out of every 100 individuals in this Republic—that that law is constitutional. But to do this, I must ask the indulgence of your Honor while I examine the progress and development of slavery ; for it would, under ordinary circumstances, seem to be a wilful waste of time to go into the examination of a question so identified with our history, that no one can be guilty of ignorance, so entertwined in the formation of the Constitution, and so blended in the progress of our legislation, that to question it is to question the reality of our national existence. But, sir, a kind of philanthropy—it is not for me to say whether spurious or real—whether fostered in political ambition or political recklessness—whether founded in christian zeal or christian intolerance—whether springing from that enlarged and glorious love of country which animated Washington to found a Republic, or from that insidious policy which, seeing an end, can stride over states, constitution, civil war, blood, and civil hatred, to arrive at an end, which but required the calm of reason and the quiet of brotherly love, it is not for me to say. But, sir, seeing here one to whose voice Senates and States have listened as to an oracle of eloquence—whose tongue is touched not only with the honey of persuasion, but with a power of utterance as resistless as the music of that cataract which immortalizes our frontier—who has come here, sir, gravely to question in the tribunals of Justice the validity and constitutionality of

this act. I feel myself justified, sir, in fortifying the prisoner at the bar, whose crime it is to have performed the duty assigned him by his country and the laws of the land, in the fortress of the Constitution, in the facts of history, in the legislation of Congress, and in the known strength of public opinion.

Let us, then, proceed first to inquire, sir, where and when slavery had its commencement.

Slavery and the slave trade are older than the records of human society. They have extended to every quarter of the globe. Egyptian history is a perpetual monument of its existence. The founder of the Jewish nation was a holder of and dealer in slaves. The Hebrews carried slavery with them beyond the desert, and as an eminent historian has said, "The light that broke from Sinai scattered the corrupting illusions of polytheism; but slavery planted itself even on the borders of Siloa, near the oracles of God." It existed in the country about Palestine--was common at Babylon and Tyre, and Phœnicia was a market for the persons of men.

Old as are the traditions of Greece, the existence of slavery is older As in Greece so it was at Rome--slavery seemed to be an indispensable element in the political organization of their republics. It existed in Germany, and had root in France; it was an element of Venitian commerce, and an early incentive to gain between the Christian and Moors.

Slave markets have darkened the history of the whole world. African slavery had been reduced to a system before Columbus opened the path to the new world; reduced to a system by the Moors, it had spread from the native regions of Ethiopia to the heart of Egypt on the one hand, and the coast of Barbary on the other.

But the danger for America did not commence nor end here. The traffic of Europeans in negro slaves was fully established before the colonization of the United States. It had existed half a century before the discovery of America.

Slavery thus existing in every part of the world when America was discovered, Columbus freighted his ships with Indians as slaves--and the slavery of Indians was recognized as lawful by a Royal edict of Spain.

Spain, too, passed Royal ordinances in 1501, granting to Spanish slaveholders emigrating with their slaves to America, the right to take them with them, thus authorizing negro slavery in America. The idea prevailed that negroes could do more labor than Indians, and this idea increased their number in America. If we pass from Spain to England, we there find Elizabeth and Sir John Hawkins dividing the profits of slave adventurers in America. Slavery thus existing, thus authorized, became the means of enhancing the profits of unscrupulous merchants, and no less unscrupulous monarchs.

Conditional servitude existed from the first settlement of Virginia, and

the supply of these servants became a regular business, till the ever memorable year 1620, when a Dutch man-of-war entered James River and landed twenty negroes for sale. This was the sad epoch of the introduction of negro slavery into the English colonies in America. The trade was profitable—the Dutch continued it. The demand for laborers created a market, and avarice blinded the planters to its evils.

It was thus introduced. Let me glance briefly at its legislative history and progress, up to the meeting and action of the Convention which formed our Constitution.

In 1662, Virginia began to arrange legislative action into a system upon slavery, and then declared those laws by which hereditary servitude was firmly engrafted into her political system. Maryland, in 1663, followed the example of Virginia. Colony after colony pursued the same policy, till the system became engrafted into the laws of Virginia, Maryland, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, North Carolina, South Carolina, Georgia and Delaware.

Slavery, then, in the estimation as in the laws of the colonies, was a fixed fact; and the colonists did not suppose themselves violating any law, human or divine, in establishing this kind of servitude. The law of Moses authorizing the enslavement of strangers, seemed to afford an express sanction of authority for the establishing slavery among them. Slavery increased in Virginia with the increase of her cultivation and growth. The one kept pace with the other, till in her patriotism, in her generosity, and in her love for the principles proclaimed as the foundation of the confederacy, she granted the North-western territory to the confederacy. Yes, it was Virginia who made the Confederation the generous gift of the territory for many new States, with the condition of exclusion of slavery—suggested by her best beloved son, and unanimously sustained by the Southern representation, when the principle was practically applied to its government by the famous ordinance of 1787.

The United States were in debt, and they knew not how to meet the first expenses of their new being. Virginia responded to their call for aid by the magnanimous cession of her immense domain beyond the Ohio. The provisions for the settlement of this territory, and for the survey and sale of the public lands for the national relief, naturally included a temporary government—for its term of minority, and prospective arrangements for its final place in the family of States, and they were made in the broadest spirit of liberty. Slavery was not then an element of sectional jealousy, and a common desire to limit its influence actuated all the members of the Confederation. It was, therefore, decided by universal consent, that it should not be permitted to enter the future States north of the Ohio, although, *for the protection of the slaveholders of other States, it was expressly stipulated that*

fugitive slaves could be reclaimed from the non-slaveholding States. Of all the representatives present when this act passed Congress, one only—Mr. Yates of New York—voted against it, and it became a law and precedent in the land.

The Congress of that Confederacy was in session when the Convention which formed the Constitution was in session. The one was in New York, the other in Philadelphia. Congress was made up of the strongest men in the nation. The Convention was made up of men of equal nerve and ability. Patriotism, devotion to country, and high-minded statesmanship pervaded the two bodies. Congress, in 1787, was discussing the celebrated ordinance for the North-western territory, while the Convention was discussing the Constitution. The character, the blighting effects and the wrongs of slavery, were discussed in each body. While the one prohibited its extension into the North-western territory, where it did not exist, the other fixed a representation for it where it did exist, and passed that clause for its protection, which, as it is asserted, grants constitutional authority for the Fugitive Slave Acts of 1793 and 1850.

The ordinance and the debates which grew out of it, recognized in clear and unequivocal terms, not only the existence of slavery, but the absolute right of States where it existed to regulate and control it.

The Constitution not only recognized it, gave it representation, made it subject to taxation, but was absolutely dependant for its existence upon these provisions; and I am prepared to say—for the history of the Convention bears me abundant and undoubted testimony—that but for these provisions relating to slavery, the Constitution would never have been formed, or this glorious Union cemented into national existence. Any theory to the contrary is but the hallucination of fanaticism.

Thirteen colonies—all acknowledging the right of property in slaves, and some of them largely engaged in importing them from Africa—declare themselves independent and self-governing, and unite in a solemn national brotherhood for the common defence, each pledging its faith to respect forever the sovereignty and domestic rights of its peers and partners in the struggle with their common foe. Thus pledged, they went into the battle, and side by side achieved the wondrous victory of the Revolution. Each for all, and all for each, the united sovereignties laid life, fortune and sacred honor on the altar of the federal compact, and fenced round the hallowed precinct with the triple guarantees of equal rights and mutual protection and State inviolability.

Thirteen slaveholding colonies united their strength to plant the star spangled banner of freedom, and nurtured it with their blood. Not one free State shared in the compact, or joined in the work, for there was not one on the continent. Thus slaveholding was one of the integral and primary conditions of our confederation; yet with this mark of fallibility on

its constitution, it grew in beauty and power as no government ever grew before, until it became the wonder and the hope of the Christian world.

But the young confederation had not created a model of union and self-government for the example and guidance of the world without vast sacrifices.

The Constitution was passed. It contained its provisions as to representation, taxation, and fugitives from service—and shortly after it was passed, in a Congress of the United States, with representatives from every congressional district, a law was proposed and passed regulating the mode of reclaiming fugitives from labor as slaves. That Congress was as distinguished for talent, patriotism and devotion to their country as any that ever dignified the annals of our legislative history. The law passed almost unanimously, and was sanctioned by Washington. The North and the South, the East and the West, voted for it. It was the whole country giving expression to what it knew to be the spirit and meaning of the Constitution. That law went into effect, but its defects defeated its execution, to the extent required to remedy the difficulty it was enacted to obviate.

Soon after the Constitution was adopted, States commenced the work of ridding themselves of slavery; and how, sir, did they do it? Did they treat it, sir, as an unauthorized institution? No. They treated slavery as a legal existing institution; they legislated it out of legal existence, as it had been legislated into legal existence. Congress, too, sir, in the year 1790, passed almost unanimously an act recognizing slavery as an existing legal institution in the States, and as an institution entirely under the control of the States where it existed, only in so far as the Constitution had undertaken to protect it by its provision as to fugitives.

It was thus early

Resolved, That Congress has no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States—it remaining with the several States alone to provide rules and regulations therein which humanity and true feeling may require.

Not only did the Continental Congress recognize its actual existence—not only did the Convention which formed the Constitution make it an absolute element in the construction of the Constitution—not only did Congress, as its almost unanimous sense of the constitutional rights of the South, pass the act of 1793—but, sir, the whole country, from that period down to the present time, has recognized the constitutional basis as an undoubted compact with the South for the protection of their slave property. More than this. From the formation of this Government, there has never been a Congress or a Senate but what have recognized, admitted and allowed to the South, these constitutional guarantees. More still, sir. There has never been a final judgment impugning these constitutional guarantees to the South, in the whole range of judicial decisions in the United States. But,

sir, there has been frequent, clear, plain and tangible adjudication supporting the construction of the Constitution which gives this guaranty of the law of 1793 to the South as a protection to slave property--decisions, sir, dignified by the candor and ability of Northern Judges. At the head of these, sir, in the highest Court of America--a Court whose decisions are every where authoritative--Joseph Story has placed the weight of his great name, the clearness of his splendid talent, and the dignity of his matchless purity, as the exponent of the opinion of the Court. The Courts of Massachusetts and the Courts of New York, of Pennsylvania, and of Ohio, have each held the same construction.

And, there is yet another authority which is worthy to be considered in the investigation of this subject. In 1849 and '50, the whole country was in a state of agitation--secession, disunion, anarchy and civil war were the daily themes of agitating dispute from one end of this country to the other, and Congress was as much agitated as the country. Statesmen, sir, forgot the asperations of party. Patriotism and devotion to the Union prevailed over fanatics at the North, and the cries of disunion at the South, and after one of the most remarkable crises in the history of Congress, when eloquence had exhausted itself in the splendid harangues of our now dying patriot—when reason, springing from the lips of the Constitution's great expounder, rolled up an unattackable rampart of historical truth—when Cass, sir, shook hands with Clay and Webster—when Berrien, and Dickinson, and Foote, and Dodge, all forgot that they were partisans, to swear allegiance to the Constitution in the passage of the Fugitive Slave Bill of 1850--then and thus it was that this act became the law of the land; and what is equally as significant, two conventions, made up of gentlemen from every district in this Union, and of opposite politics, have recently come together, and alleging the constitutional rights of the South, have placed the whole country, with scarcely a minority vote, under a solemn pledge to sustain that law as a legitimate and undeniable constitutional right of the South.

I have thus, if your Honor please, established the general right of Congress, by virtue of the Constitution, to enact a Fugitive Slave Bill.

The only remaining duty I shall impose upon myself will be to consider briefly some of the objections raised against the bill itself.

First and prominent among these is the objection that it violates the Constitution in denying a trial by jury.

The counsel commenced his attack by asserting that it was manifest that if Congress had followed the spirit of the Constitution, it would have given the privilege of trial by jury, and by claiming that it had denied this right.

Now, sir, I deny that the act of 1793 or the act of 1850 have in any way interfered with the right of trial by jury. These acts neither confer or take away this right. They leave it where it has been for more than half a

century. The right of trial by jury exists every where in the country—its application is universal. It gained no force by the Constitution of the United States, except in specified cases, but exists in every State of the Union by virtue of State constitutions. It is said, sir, that the fugitive is taken on suspicion, and on suspicion alone, under the law of 1850, and that he should be entitled to try those suspicions before a jury, instead of a commissioner. What has the commissioner to do? I answer, that he has simply to examine into the identity of the person charged as being a fugitive.

Is not the same course pursued in relation to fugitives from justice as is pursued towards fugitives from labor, with this exception, sir—that the fugitive from labor is allowed a trial or an investigation as to his identity before the commissioner, while the fugitive from justice, though taken on suspicion, is left to the recognition and mercy of the officer sent by the State in his pursuit? And as the gentleman, to illustrate his position, supposed a case, let me, sir, suppose a case of a fugitive or supposed fugitive from justice. Is he to be tried where he is arrested? No, sir. There is no State in this Union where such practice was ever thought of. Let us then see what may occur under the act in relation to a fugitive from justice. A citizen of Onondaga may leave here, sir, with a character uncorrupted and unsullied, and go to California, locate himself, and attain to position and wealth there. After he has left, some one, actuated by the spirit of revenge, may procure an indictment against him, and then obtain a requisition from the executive to bring him back to Onondaga for trial. The requisition is executed, and the alleged criminal is torn from his family, without the right of investigation in California, with his character bearing the stain of criminal accusation, and borne away under a requisition supported by a mandate standing side by side in the Constitution with that provision under which the law of 1850 was passed.

Has the gentleman ever complained of the inhumanity of this part of the law? No, sir. Silent acquiescence has reigned supreme over that, because political agitators could see in it no element of political aggrandizement. But the gentleman claims for fugitives from labor, trial by jury in virtue of the absolute provisions of the Constitution. What, sir, are those provisions? Why, sir, the first provision is, *that in all criminal prosecutions the prisoner shall be entitled to a trial by jury;* but he admits that the proceeding to recover a fugitive from labor is not a criminal prosecution, and therefore the right does not grow out of the clause of the Constitution; but even if it does, the practice, every where prevailing and nowhere questioned, is to try the prisoner at the place from which he has fled, and not at the place where he is found; but this provision and this practice refers to white men, and its cruelty is, therefore, not discoverable.

What, then, is the next and only other clause in relation to trial by jury

found in the Constitution? It is, that in suits at common law involving $20, the right of trial by jury shall be guaranteed. But the gentleman denies that slavery ever existed at common law, and cites us Coke and Blackstone and Mansfield to prove the fact, and we fully admit it. How, then, does he escape from the conclusion that the Constitution does not make reference to fugitives from labor? Why, sir, he cites another authority to show that the term "common law" is used in contradistinction to admiralty and maritime law and equity, and that by common law is meant law in the largest signification of the term. But, sir, this is opposed to all precedent, to all authority, and to the understanding of every Judge in the land. My friend told you that affidavits were not known to the common law; so of many other proceedings which are emanations from the Statute book, and they might as well be called Hindoo law as common law. If Statute law means common law, then he is right; if it does not, then he is wrong. But, sir, the fugitive from labor is entitled to a trial by a jury, and that, too, in all cases when he demands it, in the State from which he has fled, and that trial is fully secured to him; for, as has been said by Senator Douglass—

"There is great uniformity in the mode of proceeding in the Courts of the Southern States in this respect. When the supposed slave sets up his claim to the judge or other officer that he is free, and claims his freedom, it becomes the duty of the Court to issue its summons to the master to appear in Court with the alleged slave, and there to direct an issue of freedom or servitude to be made and tried by a jury. The master is also required to enter into bonds for his own appearance and that of the alleged slave at the trial of the cause, and that he will not remove the slave from the county or jurisdiction of the Court in the meantime. The Court is also required to appoint counsel to conduct the cause of the slave, while the master employs his own counsel. All the officers of the Court are required by law to render all facilities to the slave for the prosecution of his suit free of charge, such as issuing subpœnas for witnesses, &c. If upon the trial the alleged slave is held to be a free man, the master is required to pay the costs on both sides. If, on the other hand, he is held to be a slave, the State pays the cost. This is the way in which the trial by jury stood upon the old law; and the new one makes no change in this respect."

Again, the learned gentleman claims that the law is unconstitutional, because the Constitution cannot give the Commissioners authority to do what the law requires them to do. Let us see first by what authority they are appointed.

"The President shall nominate, and by and with the consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, Judges of the Supreme Courts, and all officers of the United States, where appointments are not herein otherwise provided for, and which shall be established by law."

Now it will be seen that the words "inferior courts" are not mentioned in the Constitution.

But there is another sentence in the same clause of the Constitution, which provides as follows:—

"But the Congress may by law vest the appointment of such *inferior officers* as they think proper in the President alone, *in the Courts of Law*, or in the head of Departments."

The practice under this clause is to confer the power of appointing those inferior officers, whose duties were executive or ministerial, upon the President alone, or upon the head of the appropriate department; and in like manner to give to the courts of law the privilege of appointing their subordinates, whose duties were in their nature judicial. What is meant by "inferior officers," whose appointment may be vested in the "courts of law," will be seen by reference to the 8th section of the Constitution, where the powers of Congress are enumerated, and among them is the following:

"To constitute tribunals *inferior to the Superior Courts.*"

Is the tribunal which is to carry the fugitive law into effect inferior to the Supreme Court of the United States? If it is, the Constitution expressly provides for vesting the appointment in the court of law. I will remark, however, that these commissioners are not appointed under the new law, but in obedience to an act of Congress which has stood on the statute books for many years.

What has the commissioner to do? He has simply to protect the fugitive from any unfounded claim, or rather from any claim under the Constitution and laws when the facts do not appear plainly to justify his detention. The question he is to examine is simply a question of identity: this is the beginning and end of his duty, and the law requires him to do this for greater security to the slave, and the more sacredly to guard the rights of humanity. If the same practice prevailed as exists in cases of fugitives from justice, there would be nothing for the commissioner to do, the owner could procure his warrant and then unceremoniously take the fugitive without a why or wherefore from any one. Commissioners to take testimony and for other purposes have at all times existed, whose duties were more extensive and less demanded by the dictates of justice, than the duties called for by the Act of 1850, and that without complaint or question. Again, it is said that the act is unconstitutional, for the reason the action of the commissioner under it is final. I answer the objection by the flat denial that the action of the commissioner is not final. The moment he has passed upon the question of identity, that moment his power is spent—the action of the commissioner *is not in any possible case final unless the fugitive is disposed so to consider it*—for when he has been returned to the place or State from which it is charged he has fled, he has the right secured to him of an impartial trial, as I have before shown, to test his right under the law, to his freedom, and it is not held to be final in any court in the Union only for the

purpose of a return. Again, it is said that the appointment of the commissioners by the Judge or Judges, renders the act unconstitutional, for the reason that the Judge who appointed, may set in judgment over the acts of the commissioner, and then appoint the instrument of its own illegal designs. I will only deign to answer this accusation by referring to the fact, that in every district in this State, I may almost say Union, Judges are in the habit of appointing referees on whose judgment or decision they sit in judgment; but who has ever heard of this as a cause of accusation against the Judiciary?

Again, sir, the act is arraigned as unconstitutional, for the reason that it offers a bribe in giving $10 for a conviction and but $5 for an acquittal.

The reason for this is plain and obvious. If there is no conviction, there is no record to be made up—if the identity is proved, then all the proceedings are to be arranged into a record, and the additional $5 is given as the fee for this service. But, sir, this charge of bribery does not stop here. The learned gentleman attacks every one who ventures to differ with him in opinion, be he a judge in the highest court in the Union, or be he enthroned from the labors of a long life of usefulness, integrity and honor in Heaven. He has cast the withering curse of malignant abuse on Story, than whom a purer or greater judge never lived; than whom no age or land can boast of a higher minded or more devoted patriot, and charged him with being bribed by the slave power. More, sir, he has charged our own Nelson, who is dignifying his seat upon the bench of the Supreme Court of the United States, with having purchased the seat by selling himself to the slave interest by the exercise of his judicial power in his seat in the Supreme Court of New York. Out, sir upon such ribald intolerance, such diabolical injustice—it but adds to the infamy of a cause commenced under the anarchy of mob force—it but stains the show of purity which the cry of philanthropy throws around it.

Still another objection to the constitutionality of this act is raised, on the ground that the proceedings under the statute and before the commissioner, are supported by affidavits, and affidavits alone. Now, sir, the only objection that is or can be raised against this mode of proof, is that in *ex parte*. Is this mode of proof unusual? does it overstep known usages in criminal cases? in one word, is it not the uniform practice in every state of the Union? If it is not, then, sir, yield to the argument. In every criminal case where the party is out of the state, the proceedings from necessity are *ex parte*. Why, sir, look to the provisions of the statute in our own state, in cases where the peace is sworn against an individual upon affidavit and upon affidavit alone. In that case the complaint is on affidavit, the crime is alleged by affidavit, and the proceeding is supported by affidavit, and by that

alone—every step, too, in the proceeding, is *ex parte*—and yet, sir, men are marched off to jail upon these proceedings, by *ex parte* affidavits without one murmur or lamentation of the hot house philanthropists who are struck with holy horror at this bill because it allows proof by affidavit.

Still more, sir. Every grand jury that is charged, as your Honor well knows, is charged and sworn to keep their proceedings secret, that the accused may not learn that they are charged with crime—yet, the result of these secret proceedings have more omnipotence to arrest, and place in irons, and bring their victim from the remotest parts of this country, than those under the act of 1850, because that act requires, after the initiatory steps have been taken, proof of identity, while the indictment requires no such proof. Is there justice, then, in this objection? I answer, there is not—and, yet, it is said, that Americans should hang their heads in shame over the degradation such practice, in regard to fugitives from labor, subjects them to. I might pause to ask for which Americans should most lament—whether the use of affidavits, which determine no right, and which are used but as the customary mode of proof, or the resort of such lawless mobs as, on the first of October last, forgetting the constitution, forgetting the obligations they owed to the laws, to the country, and to themselves, violated every principle of good society and Constitutional Government, by attacking a court of justice, and, with ruthless and savage insolence, driving the ministers of the law from their deliberations—a mob in which men were so full of religion, under the cry of conscience, as to go from the sanctity of prayers to the inhuman depravity of a mob—a mob composed of men who to-day proclaiming themselves saints, are to-morrow using the weapons of murderers! This, sir, is justified by principles of a higher law—by the dictates of conscience. What, sir, has not that plea of conscience justified? In England, it garlanded every county of the sea-girt isle with gallowses—in Germany, it has left the imprint of blood upon every foot of her soil—in Spain, it has swept away whole races of men by the axe of intolerance, as so many waves washing mankind beneath the surges of time—in Italy, it has immersed thousands upon thousands in dungeons, to drag out a miserable life—in America, it has hung its witches—it has burned its convents—it has violated the Constitution and the laws; and yet further, the ethereal purity of conscience is driven to the anarchy of a mob, as the holy means of avoiding the effects of these unrighteous proceedings by affidavit.

But to proceed. I will pass over the minor points of objection, to consider another proposition, by which the learned and eloquent gentleman insists that this law of 1850 is unconstitutional—which is, because it allows the legislative power to control the action of the judicial. The gentleman predicts, sir, that the day is not far distant when the judicial power will say to the legislative—You shall not dictate to us how we shall exercise our

functions, or try questions that come before us, or by what evidence we shall be governed.

Is that one of the blessings abolition constructions of the Constitution is to fix upon us? Are we to come to that day, when the judiciary is to raise its crest above legislative supervision, and assert itself an autocratic element above control, with the power of dictation to the democratic element of our society? God forbid! God forbid that we should be compelled to follow the dictation of Judges, whom, if we are to believe the eloquent gentleman, are so corrupt that the Supreme Bench of our land is filled by one who bought his place by selling his honor, and who, if he is to be credited, cannot be trusted with the execution of the Fugitive Slave Law of 1850, for the reason that it offers $5 for a conviction. I have no ambition to be the subject of Judges, if they are as corrupt as the counsel asserts them to be; nor would I give them the privilege of being dictatorial, lest they might remember the power of Jeffreys, and, remembering it, exercise it.

It is further objected by the learned counsel, that the law is unconstitutional because it recognizes slavery in the District of Columbia.

There is no plainer, or more generally received principle, than that the territory at any time acquired, whether by conquest, treaty, or gift, comes to the power to which it is ceded with all its laws of property, all its immunities and all its privileges as secured by the ceding power, which it retains until the power to which it is ceded changes those laws, and annuls those privileges and immunities. This principle, sir, defeats the argument.

But, sir, the counsel further insists that this act is unconstitutional, because it abrogates the privilege of the Habeas Corpus Act.

I deny, sir, that it touches or infringes in the remotest degree upon this, as the gentleman says, bulwark of our liberties. Is this great palladium of liberty to be struck from the temple it supports, by a statute which, in no degree, either questions its force or abrogates its provisions? No, sir. The liberties of a people are not so easily disposed of. The act of 1850, like the act of 1793, leaves the Habeas Corpus precisely where the fathers of the Constitution left it.

It is, sir, as omnipotent to secure the rights of the fugitive from labor, as it is to secure the rights of the fugitive from justice. It can interpose to scrutinize the regularity of the proceedings by which the fugitive is taken from the place of his refuge. It can discharge him, if he is not taken by virtue of them, or if they be irregular. Then, sir, its power is not spent till the slave arrives at the limit to which the proceedings before the commissioner consigns him. Then, sir, he may rest his claim to freedom upon that proceeding—and this is the full extent to which the right exists in the case of fugitives from justice. The man sent for in California as a fugitive from New York, can make no other demand upon its provisions, if the proceed-

ings are regular. There is no power in the Habeas Corpus to bind the arm of the legal power, or to arrest the steps of their prisoner from the bar of justice.

I have, thus, if your Honor pleases, with a full appreciation of the magnitude of the subject, and of my own inability to treat it, replied to some of the objections raised by my eloquent friend, and, as I submit, defeated the conclusions to which he invited your decision. I shall now leave the case for further and abler reply, with my learned associate, who will answer and refute the other objections raised to the constitutionality of the acts of 1793 and 1850—claiming, sir, that I have vindicated the prisoner at the bar from the charges in the indictment; and I claim this with confidence, because I have but reiterated the construction of the constitution given to it by its framers—given to it by Congress—awarded to it by the Judiciary, and claimed for it by the whole current of popular opinion for more than half a century.

ARGUMENT OF GEORGE F. COMSTOCK.

George F. Comstock made the closing argument for the defence. I concur, sir, (he said) in what Mr. Smith has said about the importance of the case. We have now in this Court the extraordinary and anomalous spectacle of a Marshal of the United States being placed on trial as a felon, charged with no act of crime, except simply executing in good faith, and with integrity of purpose, a process placed in his hands, authorized by a fundamental law of the Union, and which his sworn duty bound him to execute. If a serious purpose is entertained on the part of those who have promoted this prosecution of convicting the defendant, no graver occasion could possibly arise in any court of justice in this country.

It is well known that on the first day of October last an attempt was made in the city of Syracuse to execute a law of the United States obnoxious to the prejudices of some portion of our fellow citizens. It became the duty of the defendant to receive and execute a process placed in his hands for the arrest of a slave, who had fled from the service of his master in the State of Missouri. He did so, and did no more. There is no complaint of any inhumanity or excess in the performance of his duty. It is also known that a large number of misguided and infatuated persons, ignorant, it would seem, of their simplest duty as citizens—that of obedience to law—assembled themselves together, erected the standard of rebellion against the Constitution and the law, invaded the sanctuary of justice, and forcibly rescued from the Marshal the prisoner whom he had in custody.

If resistance to the paramount laws of the Union had stopped here, it would not have altogether been without precedent. There have been one or two, and only one or two, previous occasions when the laws of the United States have been forcibly resisted by combinations of ignorant or bad men, and when the power of the Government has been invoked to put down rebellion. But these examples of insubordination have been somewhat exceeded in the case under consideration. Not content with trampling the supreme law of the land under foot, the persons whose destestable teachings had instigated this disgraceful riot, besieged a grand jury, and the grand jury, instead of indicting the law-breakers, indicted and presented for trial the officer who had attempted to execute the law. Nullification has, therefore, now assumed the far more dangerous form of judicial proceeding, and it demands from this Court a sanction which will give it ten-fold greater power of mischief. It is this consideration which lends to this case its

highest importance. The acts of a misguided mob in hostility to a fundamental law, which, perhaps more than any other, is essential to the existence of that great political association which constitutes us one people, would have no claim to be regarded as the expression of a general sentiment, and might, therefore, entail no general consequences. Prompt punishment might overtake the offenders, and our political institutions receive no shock.—But once let it be proclaimed that the sentiment which impelled the mob receives the approval of a high judicial tribunal, that it is even to be regarded as a high criminal offence for a sworn public officer to execute the law, and no human foresight can tell the consequences. The judgment which the tribunal I am now addressing ought to pronounce in the present case, should be the judgment of every other Northern tribunal, and the question, therefore, is whether this law of the Union ought to be nullified, not merely by mobs and violence, but by the solemn decrees of the judiciary in all the non-slaveholding States. A question of more transcendant importance cannot be imagined.

I have paid, sir, some attention to judicial precedents in this case, and if I can understand their force, every question properly involved in this controversy has been solemnly adjudged in favor of the defendant by the Supreme Court of the United States. That Court is the Supreme Tribunal of the Nation, demanding implicit obedience, upon constitutional points at least, from every other tribunal, and from every citizen in the land. This high authority is derived from the Constitution itself, and he who disowns it is guilty of the surprising folly of exalting his own wisdom above the wisdom of the Constitution, and his own conscience above the authority of the Supreme Law. I might, therefore, rest the question of the guilt or innocence of the defendant upon the ground, simply that it has already been determined in his favor by an authority which knows no appeal.

This discussion has, however, been permitted (and I am glad this permission has been accorded to the other side) to travel over a much wider field. Authority and precedent have been disregarded. The discussion of first principles, long since settled, has been renewed, and new readings have been given to the Constitution itself. And, as the avowed object of this course of argument has been to produce in the popular mind a spirit of discontent against the Constitution and the law, it may not be useless to follow, far enough, at least, to show the reasonableness of the compact into which our fathers entered, and the reasonableness of the interpretations which have been placed upon it by all men, statesmen and jurists, lawyers and laymen, uniformly, until the advent of the new born lights which have lately risen upon us.

Let me say then that this Constitution under which we now live, found slavery existing as a fact in all the Southern and some of the Northern

States. It was a pre-existing fact, and depended upon the laws of the several States as seperate and independent political communities. Whoever does not know this had better commence the study of American history. And what effect had the Constitution upon this pre-existing fact? I answer none whatever. The Constitution left slavery as it found it, a fact, an institution still upheld by the laws of the States where it existed. The Constitution was a bond of union between sovereign and independent political organizations for certain great common ends and purposes absolutely essential to our existence as a nation. It did not weaken—it did profess to weaken the local institutions of the several States. You may, therefore, overthrow the Constitution—you may agitate this subject until the bands of the Union shall snap asunder, and slavery will still exist in the Southern States, still upheld by local laws, altogether beyond our reach. The mighty mischief may be done. Fanatics may continue their unholy work until the sun of the Union shall go down in blood, and not only will not slavery be abolished, but not one slave will be emancipated.

An unsound and unwholesome sentiment appears to pervade the minds of many good men that the Union and the Constitution are in some indefinable way responsible for the existence and perpetuation of slavery in the States, and, hence, not a few, I fear, are ready to see the Union sacrificed on the alter of anti-slavery agitation. It may lead to sounder sentiments, and juster views of conduct and duty for all such to pause and reflect, that the Union may be shivered to atoms, and the sin of slavery will still remain. The cause of emancipation will have gained nothing, abolutely nothing.

I have said that the Constitution did nothing to weaken the institution of slavery as it existed in the States. I now say it did nothing to extend its domain or to guaranty its perpetuity. Those subjects were left precisely as the Constitution found them, and those subjects are entirely foreign to the present discussion. In short, sir, we have neither a pro-slavery, nor an anti-slavery Constitution. I do not agree with some, that the Constitution carries slavery wherever the republic extends its domain. Where it found slavery it simply let alone. Where it now finds it lets alone.

This Constitution, however, while it did nothing to extend or perpetuate the institution, did impose upon all the States and all the people of the States one obligation, which is simply coeval and co-extensive with the actual existence of slavery, but has nothing to do with its perpetuation or extension. That obligation can be expressed in no plainer terms than it is set down in the Constitution. Here it is:

"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

This clause of the great national compact is just as obligatory as any

other. I have heard, sir, of a "higher law" before which constitutions and compacts are of no account, and in obedience to which promises must be broken and faith violated. I know no *such* "higher law." The obligations of man to his maker may be admitted to transcend all other obligations. But who is wise enough to be the infallible interpreter of this higher law, so as to set it up in opposion to the simplest duty of a citizen, that of obedience to the Constitution of his country. I know there are those who, enthroned in lofty conceits of superior wisdom and purity, summon the Constitution of their country to the bar of their own conscience, and without hesitation pronounce a judgment of condemnation upon the glorious work of Washington and Franklin, of the sages and heroes of the revolution. There is a heighth and a depth to this folly which no argument can reach.

There, then, is the Constitution which is supreme over all the States, and all the Constitutions and laws of the State, and entitled also to absolute and perfect supremacy over the consciences and conduct of all good citizens. I hold it the wisest instrument ever framed by the hand of man. It deserves not only simple obedience, but to be enthroned in the hearts of all.

Let us ascertain the meaning of this obligation, for when that is done, absolute obedience and acquiescence are due from every State, every judicial tribunal, and every individual. This meaning, too, should be sought with honest minds. Strange and unheard of interpretations should be avoided. The *intention* of the framers of the instrument is the point to be ascertained, for that is the cardinal rule in the interpretation of all Constitutions and laws, indeed, of all instruments whether public or private.

There, I say, is the Constitution, and I hold its meaning as plain as though it were written on the sky. No person held to labor or service in one State, shall be discharged from servitude by fleeing to another State, but shall be "delivered up on claim." Glossary and commentary cannot obscure the plain sense of these words. Sophistry cannot refine it away. It is said that apprentices and others are held to service and labor. Most undoubtedly. But are not slaves also held to "service and labor?" Apprenticeship is one form of servitude, slavery is another. It is perfectly plain that the clause does not apply to hired servants in the ordinary acceptation of that term. The employer is not entitled to detain the person of a mere hired servant. But the Constitution says that the person held to service shall be "*delivered up*," distinctly implying that the servitude must be of such a character, that the party to whom it is due may take and hold possession of him who owes it. This can only be true of apprentices and slaves, and is as plainly true of one as the other.

The learned gentleman who has argued the case for the prosecution, I know, has little or no veneration for authority, unless it can be turned to

his own purpose. I can refer him, however, to one which may command his respect. The translators of the New Testament Scriptures have uniformly rendered the word "slave" in the Original into "servant" in the translation. Indeed, throughout the New Testament, the word servant is used to indicate a class of persons who, under the laws of the Roman Empire, were the absolute property of their masters, in other words, slaves. I may refer to the Epistle of Paul to Philemon, and other writings of that great Apostle, where the duties of servants to their masters are laid down. I commend those writings to the attention of the gentleman. The precepts there set down will be found to differ somewhat from the bloody and atrocious code of modern abolitionists.

No rule is better established in construing instruments, than that we are to look at the surrounding facts and circumstances existing at the creation of the instrument for the purpose of applying its terms to some appropriate subject matter. This rule appears to have been overlooked in the argument on the other side. Let us apply it.

And, in applying the rule to the constitution, two facts are to be considered: 1st, that Slavery existed in some of the States. 2d, In others it did not. These facts were understood by the framers of the Constitution. They were great political and social facts which could not be overlooked in forming a government for the people of the United States. They were facts to be dealt with, to be disposed of in some way or other.

Now, in applying the rule, it must be considered, that upon the principles of the common law, if the constitution made no provision for the case, a slave escaping into one of the free States, would become a freeman, and could never be reclaimed by his master. A further consequence would follow. Under a constitution silent on the subject, the National Legislature could never make a provision for the case. It could possess no power over the subject. This would result from the principle that Congress can exercise no power not expressly or impliedly granted. The consequence would be that citizens of the Slave States would lose all control over their absconding property. This was the condition of things upon which the Convention had to act. Upon this subject we should expect the Constitution to speak. —It did speak, it still speaks to us, and its language becomes remarkably intelligible to every one who considers the exigency it was made to meet.

The observations just made, if I mistake not, show not only the meaning of this clause in the National compact, but demonstrate that the bargain is not so utterly atrocious as it has been sometimes called. It has been called "a compact with Hell;" and other hard names have been given to the Constitution, and those who are willing to see it lived up to. I think it was a lawful and a proper compact for us to make. Grant that Slavery is a sin,

does it of necessity follow, that in forming a league among independent States, it was sinful to promise and agree that a slave should not become a freeman by fleeing from one State to another? By no means. The slave-holding States had the right to exact this condition as one of the terms of the alliance.—The other States could grant it without being at all responsible for the sin of Slavery.

It is known that great political and commercial necessities imposed upon all the States the absolute necessity of forming this Union, and it is just as well known that without this clause which now seems to unsettle some minds, the Constitution could not have been adopted, and the Union would not have been formed. This consideration may go far to relieve the consciences of well meaning men, who have not hitherto reflected on this subject.

It is sixty-five years since this Constitution was framed, and now, for the first time, a doubt is suggested whether the clause under consideration applies to absconding slaves. This doubt, let me say, never arose in the minds of those who framed the instrument, never arose among the people who approved and adopted it. Of this we have the highest possible evidence. In 1793 an act of Congress was passed, which made provision for the reception and surrender of persons "held to labor who should abscond from the service of their masters." In this act the same words are used as in the Constitution, "persons held to service or labor." Now, if the Constitution by these terms did not intend to designate slaves, it is plain that the act of Congress did not. And yet no man in this broad republic, to this day, has ever doubted as to the meaning of this act of Congress. No Abolitionist even ever doubted that by this law, Congress provided and intended especially to provide for the surrender of fugitive slaves; and this law, be it remembered, was passed by a Congress many of whose members were in the Convention which framed the Constitution.—If, therefore, by the terms "persons held to labor" in the act of Congress, passed so soon after the Constitution was adopted, slaves were intended to be designated, is it less than folly to deny that the same words have the same meaning in the Constitution itself?—When we consider further that the law of which I speak was enacted for the well known purpose of carrying into effect this part of the Constitution, is it not incredible that any man who admits the meaning of the one, should doubt or deny that of the other.

But I will refute this strange interpretation of the Constitution out of the mouths of the abolitionists themselves. The fugitive slave law of 1850 DOES NOT CONTAIN THE WORD SLAVE. It speaks only of "persons held to service or labor" and provides for the surrender of such persons, when absconding, to their masters. Now this law has been denounced over the

land as the consummation of all human wickedness. For the last two years it has furnished the great staple of abolition agitation. Nothing in all billingsgate can equal the abuse heaped upon this law, its authors and supporters. Why this denunciation? Is it because it provides merely for the return of an indented apprentice who runs away? By no means. It is because, in the language of abolitionists, it consigns men to slavery. No milder interpretation has ever been given to this law by any abolitionist, and in this they agree with all other men, that it is a law intended to provide for the return of fugitive slaves to their master. But is it not an especial wonder that while this law is denounced for its unutterable wickedness as a law to uphold slavery, the Constitution which uses precisely the same terms is declared to be innocent of all allusion to Slavery!

There is one other rule in the construction of compacts founded in honesty and good faith, and which has a marked application to this question of constitutional law; and this rule is, that an obligation is to be understood in the sense which is known by him who gives it to be placed upon it at the time it is given by him who receives it. By the Constitution, we, as non-Slaveholding States bound ourselves to deliver up "persons held to service or labor." This was understood by the States where slavery existed,as a protection to their property in slaves—and all the other States knew it was so understood. Common honesty, therefore, requires the obligation to be taken in that sense, and the attempt to escape from it now by a mere verbal criticism, involves a breach of faith which in a private matter, would disgrace a private citizen.

Without resorting, therefore, to Judicial authority, enough has been said to vindicate the Constitution from the strange and unheard of interpretation which has been contended for in this discussion. I now add that the question is settled by Judicial decisions in nearly all the non-Slaveholding States, and finally, by the solemn judgment of the highest tribunal in the nation, from whose authority their is no appeal. The Supreme Court of the United States in the year 1842, following a series of similar decisions, made in the highest courts of the Northern States, without a dissenting voice, solemnly adjudged the Fugitive Law of 1793, to be a Constitutional law, authorized by the clause of the Constitution, whose plain and obvious meaning has now been assailed. On this high authority, the argument as to the Constitutional recognition of the right to reclaim fugitive slaves might have been rested on the start, and perhaps ought to have been. But, I have thought that the labored effort which has been made to give a new reading to the Constitution in a matter of such fundamental importance, should not go forth to unsettle the minds of community, already too much disturbed, without a humble attempt on my part to refute it. I shall pursue this question no further.

There, then, is the Constitution, and there, too, is its plain and undoubted meaning.—There, too, our obligations and duties as American citizens are traced in letters of light. And now, if there be any who hate the Constitution for this cause, let me say that if it were destroyed to-day, the same obligation in respect to fugitives from service would be soon restored in some other form. Let the Union be dissolved and a Northern and a Southern confederacy take its place, and what then? He who supposes that two conterminous States could maintain peace with each other, without some compact of this kind, has but slightly considered the subject. The necessity of preserving peace and order, would soon compel them to enter into treaty stipulations for the surrender of fugitives. Nor would it be strange if the free State should be the first to desire to enter in these stipulations.—Let the question be presented in its broadest aspect. Would it be considered desirable to promote and encourage the immigration of three millions of blacks, and to mix them among the free white laborers of the North? What should we do with them. Should we give them political and social equality? What would become of them? Let the philanthropists answer that question. If we saw the remotest danger of a general stampede of the black race to the North, we should at once arrest the movement by prohibitory laws.—Some of the free States bordering on the slave states, and which, therefore, feel the full force of this evil, have enacted such laws. Some have incorporated the prohibition into their constitutions.

And this presents one of those strange inconsistences which sometimes get possession of the minds of men. The extremest reluctance seems to be felt when we come to the question whether a fugitive slave shall be given up to his master. Many good men even regret that the Constitution ordains that it shall be done, and yet were the Constitution and the law broken down, and the question presented whether all or any considerable part of the slaves of the South should be allowed to escape, we should regret the absence of that very restrain against which some of us are inclined to rebel. Many of those whose sympathies are awakened by the contemplation of an isolated case here and there of the restoration of a slave, would be first to deprecate the consequences of allowing these excited sympathies to work out their legitimate result upon a broader scale.

The defendant is arraigned for an act of official obedience to the Fugitive Slave Law of 1850, and it is time to come to the consideration of that law. This enactment has been met by a spirit of hostility, denunciation, and abuse, without any parallel in the history of our government. All who were instrumental in its passage, all who are willing to see it executed, are denounced as traitors to God, to freedom, and humanity. The only question properly before this Court is, whether this is a Constitutional or an

Unconstitutional law. But it is due to truth, to the law, and those who do not join in this denunciation to state with accuracy the cause of this extraordinary state of feeling. I have no hesitation, then, in saying that this cause will be found not in the particular provisions of the law itself, but in a spirit of enmity to the constitutional requirements on which it is based. I have never heard any man, who was willing to see the Constitution faithfully lived up to, join in this denunciation. The law has been denounced not on the ground that it endangers the rights of a freeman, but because it is considered simply effectual for the surrender of slaves as the Constitution requires. "Jerry" was rescued by a lawless mob, not because he was a freeman, *but because he was a slave*, not through any apprehension that he would not have a fair and impartial trial, but lest a fair and impartial trial would return him as a slave to his master. In short, this extraordinary excitement, which seems to have thrown even a grand jury from its balance, is founded, not in a just regard to the rights of free citizens, but in hostility to the surrender of slaves. Those fervid appeals to humanity which have been made in the public discussions of this law, and which seem to have unsettled the minds of many, are appeals against the Constitution itself, There has been a most mischievous misapprehension on this subject. I doubt not many good men have been led to view this law with great abhorrence, under the mistaken impression that the right to reclaim slaves is founded entirely upon it, and not upon a Constitutional obligation as old as the Government itself. When this error is corrected, it will lead to sounder views of the law, and a more correct appreciation of our duty as citizens to obey it.

I have done, I say, with the doctrine that there is no Constitutional obligation on the subject, and I come to the consideration of other objections to the fugitive slave law of 1850.

There are two clauses in the Constitution placed in immediate juxtaposition to each other, and they must be considered together. They are these:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The principle of these two provisions is precisely alike, the only difference being that one applies to fugitives from justice, the other to fugitives from labor. The one clause provides, that the person fleeing from justice shall be delivered up on demand of the executive authority of the State from which he fled. The other, that the fugitive from labor shall be "delivered

up on demand [claim] of the owner. No other difference can be pointed out.

It is perfectly obvious, therefore, that if either clauses conferred upon Congress the power to legislate, so did the other. If the delivery can in one case be constitutionally made without a previous trial by jury, so it can in the other. If under the one, Congress can authorize a commissioner to act, so it can in the other. All this is remarkably plain.

And these provisions being thus entirely alike, we should expect a corresponding similarity to run through the legislation of Congress for the purpose of carrying them into effect. Accordingly we find it so, the only difference being in such details as present no constitutional question.

In 1793, very soon after the Constitution was adopted by the States, Congress legislated on both subjects at one time, in one act, and upon a uniform principle so far as any constitutional question can arise. The first two sections of this law provide for the case of fugitives from justice. They declare, in substance, that the person accused of crime shall be delivered up on production of the indictment found in the State from whence he fled, or on a mere affidavit charging him with the crime. Upon this evidence the accused is sent back to the State where the alleged crime was committed, and there he may have his trial. The remaining two sections apply to fugitives from labor. They are as follows:

SEC. 3. *And be it also enacted*, That when a person held to labor in the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any of the said States or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any Judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to *give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor* to the State or territory from which he or she fled.

SEC. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared, or shall *harbor or conceal* such person after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try

the same; saving moreover to the person claiming such labor or service his right of action for or on account of the said injuries or either of them.

Approved February 12, 1793.

This statute in both its branches is yet the law of the land. The constitutionality of that part which relates to fugitives from justice has never been questioned. The constitutionality of that part which relates to fugitives from labor has been deliberately adjudged in the highest State Courts and in the Supreme Court of the United States. Nor am I aware that this statute, in either of its aspects, was ever denounced for inhumanity or immorality. A free white citizen may be arrested and sent in chains to another State upon *ex parte* testimony, and without trial. Even the *habeas corpus* would not release him if the proceedings were regular. So a fugitive slave might be sent back to the State from whence he fled on *ex parte* testimony without trial, and the *habeas corpus* could not prevent it, unless some flaw could be found in the proceedings. In either case the fugitive was entitled to trial in the State from whence he fled. That right in either case exists, and has always existed, in every State in the Union.

This statute has been the law for sixty years. It was a well considered law, and there has never been any excitement about it. Under it free white citizens have been arrested and sent away to other States for trial.—No one has ever complained of this, although the accused person may have been innocent of the crime charged against him. So under the same law fugitives from service have been sometimes arrested and returned to their masters upon testimony of the same grade, and proceedings of the same summary character. This law was enacted by wise and eminent men, and was approved by Washington.

This view of the Constitution and of the act of 1793 prepares us to examine the amendatory act known as the Fugitive Slave Law of 1850. We shall find it obnoxious to no constitutional objection which did not lie with equal force to the act of 1793, nor to any greater objection on the score of humanity, unless indeed more careful guards against evasion or abuse are to be considered such an objection.

The act of 1850 does not provide for trial by jury in the State to which a fugitive has fled. Neither did the act of 1793. Yet it is a great mistake to say that either of these laws denies to the alleged fugitive the right to be tried by jury. I believe there is not a slave State where a person held to service as a slave, but claims to be free, may not bring his suit for freedom. In all the slave States there are humane and liberal systems of legislation on that subject. According to my information, when the supposed slave sets up his claim to freedom, every facility is afforded him for a fair adjudication of the question. The master is required to give bonds for the appearance both of himself and of the alleged slave, and that he will not remove the slave from the jurisdiction of the Court where the suit or pro-

ceeding is instituted. Counsel are appointed for the slave at the public expense, and the officers of the law are required to render him all facilities for the prosecution of his suit, free of charge. It should be stated, moreover, what I believe to be strictly true, that in all the slave States there is no public sentiment, no prejudice or bias, which prevents a perfectly fair and impartial trial.

It is a great error to suppose that there is any thing in the fugitive slave law which authorizes the judge or commissioner to make a *final* decision or determination that the fugitive is a slave, so as to prevent a trial of the question in the State to which he is remanded. This was not true of the act of 1793, nor is it true of the act of 1850. Both laws are precisely alike in this respect. Under both of them the judge or commissioner, if the case is made out to his satisfaction, gives a certificate for the *removal* only of the alleged slave to the State he fled from. This certificate has no other scope or effect. It is not an adjudication upon the question of slavery or freedom. On this point no one can entertain a doubt who will take the trouble to read the law.

In respect, then, to this matter of trial by jury, about which so much has been said, the law on examination is found not to possess that utterly atrocious character which has been sometimes imputed to it. The fugitive is simply returned to his master, and is taken to the State he came from. If he is actually a slave and knows himself to be so, he will probably bring no suit for freedom, and the law simply and in a summary way effectuates the purpose of the Constitution. The slave is "delivered up on claim." But suppose the slave bona fide insists that he does not owe the service which his master claims. Where should the trial be for the benefit of both parties? In a distant State to which the fugitive has fled, or in the State where the question arose, and according to the laws of which the matter is to be determined? If the master has witnesses to establish his title finally to his alleged slave, should he be compelled to bring them here? If the slave has witnesses to prove his freedom according to the laws of Missouri, should he be compelled to produce them before a New York Court? If there is no mistake as to the *identity* of the fugitive, and there is an actual question whether he be a freeman or not, the analogies of the law as well as the convenience of the parties seem to me to require that the trial should be in the State where the parties resided, where the question arose, and where it may be supposed the witnesses will be found. And in respect to questions of identity, those will very rarely occur. If, however, the person arrested insists he is not the fugitive claimed, or a fugitive at all, there can never be any difficulty in proving the facts before the judge or commissioner. The broadest range is given to that inquiry by the law under consideration.

I know of no more detestable offence than kidnapping. But kidnapping is the fraudulent or forcible abduction of a person who is not a slave for the purpose of reducing him to slavery. This offence, let me say, is never perpetrated under the forms of law. It is done in the silence and darkness of the night, and without any pretence of law. If any free citizen of the North, whether black or white, is in danger of being kidnapped, neither trial before a commissioner nor trial by jury can prevent it. Such an outrage never has been attempted, and never will be attempted in the face of day, efore a judicial tribunal, and in the midst of a non-slaveholding community. It may be stated, I believe, as a fact, not a single freeman was ever reduced to slavery through the instrumentalities of the law either of 1793 or 1850. I have never heard of but one case of mistake on the subject of identity, and in that instance the owner promptly and honestly corrected the error. In the instance to which I refer the commissioner refused to hear evidence on the part of the alleged fugitive. That this was an erroneous construction of the law no one now entertains a doubt. Nothing, in short, can be more idle than the apprehension that under this act persons never held as slaves can be seized and carried away under the forms of the law. If, on the other hand, the person arrested is actually a fugitive from service, but is really entitled to his freedom, and the decision of the commissioner should happen to be against him, (an event which will not be likely to occur twice in a century,) he can assert his freedom in the tribunals of the State from which he fled.

It is said the Constitution declares that the trial of *crimes* shall be by jury. I am not able to see what this has to do with the question. The person arrested as a fugitive from service is not accused of crime. But the same clause of the Constitution also declares that the trial shall be held in the State where the crime was committed. If, therefore, that clause had any bearing upon the present question, it would only tend to show that the fugitive from service must have his trial in the State he came from. But there is really no analogy between the two cases.

It is also said that the amendments to the Constitution secure the right of trial by jury in all suits at common law where the value of the property exceeds twenty dollars. But will any lawyer say that the proceedings authorized by the Fugitive Slave Law, whether of 1793 or 1850, are a suit at common law? Most plainly they are not. It is not a suit at all, but a summary proceeding. About this, it seems to me, there can be no difference of opinion. I have done with the subject of trial by jury.

I come next to the objection that this law suspends the writ of habeas corpus. This is flippantly asserted by persons who seem to know nothing of the nature of that writ, and who have probably never read the law they denounce. If the objection were true in fact, the law would be clearly un-

constitutional to that extent; but the only consequence would be, that the writ of habeas corpus might issue notwithstanding the prohibition. No law can suspend that writ, and any attempt to do it would be simply void. Every thing else in the law might nevertheless be entirely free from constitutional objection. If the objection were well taken, therefore, it is too plain for argument that it would not affect the case under consideration.

But the Fugitive Slave Law does not suspend the writ of habeas corpus. On this subject the act of 1850 does not differ from the law of 1793, and I believe it was never suggested that the habeas corpus was suspended by that act. I say they do not differ. The act of 1793 declared that the certificate of the Judge or officer should be "*sufficient warrant* for removing the fugitive from labor to the State or territory from whence he fled."—The act of 1850 has more copious language, but the meaning is the same. It declares the certificate shall be "*conclusive of the right* to remove such fugitive to the State or territory from which he escaped, and *shall prevent all molestation by any process* issued by any court, judge, magistrate, or other person whomsoever." Under the act of 1793, the certificate is simply sufficient, and that means all-sufficient. Under the act of 1850, it is no more than sufficient. Under either law, the certificate would prevent all *molestation by any process* or other means. That this does not interfere with the habeas corpus, will appear by a moment's attention to the nature and office of that writ.

And on this point there is great misapprehension, or at least great indistinctness of apprehension. It seems to be supposed by many, that the habeas corpus is a writ to set a man at liberty, whether he is entitled to liberty or not. This is a great mistake. Let us attend to the operation of the writ. The person applying for the habeas corpus alleges under oath that he is illegally restrained of his liberty. The writ issues as a matter of right. On the return of the writ, the cause of the detention is inquired into. If the person is found to be restrained without authority of law, he is discharged. If, on the other hand, the restraint is under lawful authority, he is remanded to the custody from whence he came. Take any prisoner in the jail of the county, he has a right to this writ; but if on the return it appears that he is regularly committed under valid process, he is sent back to jail. So under the Fugitive Slave Law. The alleged fugitive may apply for the writ, stating that he is unlawfully restrained. If, on the return, it appears that the Judge or Commissioner had not jurisdiction to make the certificate, or that the proceedings are irregular and invalid for any cause, he will be discharged. If, on the other hand, it appears that the Commissioner has proceeded according to law, he will be remanded. The writ of habeas corpus only inquires into the regularity of the proceedings. If an alleged criminal has been arrested and committed according to the forms of law, he

is sent back into custody. Whether he is a criminal or not, is not enquired into. Such an enquiry would be drawing jurisdiction of all crimes before the officer who issues the habeas corpus, while the law has given it to other tribunals. So in the case of the alleged fugitive from labor. The legality of the proceedings before the Commissioner may be looked into on habeas corpus, but the merits of the case will not be examined. If the proceedings appear to be regular, the question whether he is a slave will not be enquired into. That enquiry the law has committed to another officer. If, on the other hand, the proceedings have any fatal flaw in them, the fugitive will be discharged, whether he is a slave or not.

And this being the nature of the writ of habeas corpus, it is quite plain that the Fugitive Slave Law does not interfere with it. When the act says that the certificate shall be "sufficient" for removal, and "shall prevent all molestation," &c., of course it is implied that the proceedings have been according to the law, and that the certificate is regular and valid. If the proceedings have been according to the law, and the certificate is therefore valid, a new habeas corpus must be invented to overthrow them. The habeas corpus now known to the law cannot subvert a regular and authorized adjudication of any tribunal, whether that adjudication be right or wrong on the merits. Philanthropists must invent a new writ to accomplish that object.

It is, sir, only the enemies of this law who would deny to the fugitive the privilege of habeas corpus. The law itself does no such thing, and no one but its enemies, who would also be the enemies of any other law, has ever claimed for it any such construction. On the contrary, the right to the habeas corpus has uniformly been vindicated under both the acts of 1793 and 1850. [Here Mr. Comstock went on to cite various instances where the writ of habeas corpus had been issued on application of alleged fugitives from labor, in some of which the fugitive was discharged, in others remanded into custody, according as the proceedings appeared to be regular or invalid.]

A grave objection is made to this law on the ground that it professes to authorize commissioners to entertain the proceedings for the arrest and removal of fugitives. As this feature did not exist in the law of 1793, the objection deserves a respectful consideration. It rests, if I understand it, on the ground that the powers conferred are judicial in their nature, and can, therefore, be exercised only by Judges of the Superior or Inferior Courts of the United States, who by the Constitution are to receive stated salaries and hold their offices during good behavior. These Commissioners, it is said, are not Judges of that character.

The answer to this objection is, that the proceedings under this law, although they demand the exercise of great judgment, caution and discre-

tion, are not judicial in the sense of the Constitution. It has been shown already that the proceeding is preliminary, and not final. The Commissioner renders no judgment on the question of freedom or slavery, but only certifies that the evidence is sufficient to warrant a removal. So in criminal cases. The magistrate hears the evidence, and finds it sufficient to commit for trial. This is not the exercise of a judicial power in the proper sense of the term. Judicial power is exercised when the alleged criminal is finally tried for the offence. So a Grand Jury indicts and presents for trial, but this is not a judicial act.

On this point I am able to cite the high authority of Justice Story. In his Commentaries, (volume 3, page 667,) referring to the two clauses of the Constitution which relate to fugitives from justice and fugitives from labor, he says:

"It is obvious that these provisions for the arrest and removal of fugitives of both classes, contemplate summary ministerial proceedings, and not the ordinary course of judicial investigations, to ascertain whether the complaint be well founded, or the claim of ownership be established beyond all legal controversy. In cases of suspected crimes, the guilt or innocence of the party is to be made out at his trial, and not upon the preliminary inquiry whether he shall be delivered up. All that would seem in such cases to be necessary is, that there shall be *prima facie* evidence before the executive authority to satisfy its judgment, that there is probable cause to believe the party guilty, such as upon an ordinary warrant would justify his commitment for trial. And in the cases of fugitive slaves, there would seem to be the same necessity of requiring only *prima facie* proofs of ownership, without putting the party to a formal assertion of his rights by a suit at the common law. Congress appear to have acted upon this opinion; and accordingly in the statute upon this subject have authorized summary proceedings before a magistrate, upon which he may grant a warrant for a removal."

Sir, my eloquent adversary, in his zeal to subvert this law, not only contemns all precedent and authority, but he would reflect dishonor upon the names of the illustrious dead. He has spoken of the better days and the *degenerate* days of Judge Story. There was, sir, no degeneracy in the life of that eminent jurist. From the commencement to the close of his great career, he was an honor to his country and the world.

As I have before said, the objection I am considering goes upon the theory that the act of 1850 devolves judicial power upon Commissioners, which can only be exercised by the Courts of the United States, and I have stated the distinction in this respect between that law and the act of 1793. A moment's attention, however, to the act of 1793 will show that the distinction involves no constitutional difference. The act of 1793 devolved the power in question not only upon the Judges of the United States, but upon *all State magistrates, high and low.* Even Justices of the Peace, no matter how appointed or how paid, could exercise this power. Now, then, State Magistrates are not Judges of the United States. It is more plain

that they are not, than that Commissioners appointed under the authority of the United States are not. It follows, therefore, that this objection lay with greater force to the act of 1793, and yet the Supreme Court of the United States, in holding that law to be constitutional, said, "that no doubt whatever is entertained" that these Magistrates could exercise the powers in question.

Who are these Commissioners? The office, it should be stated, is not created by the Fugitive Slave Law. They are appointed under the authority of previous laws, and before this law was passed, they were examining and committing Magistrates in all cases of offences against the laws of the U. States. (See Act of 1812 ch. 25; Act of 1842 ch. 168; and Judiciary Act of 1789, section 33.) Now, their powers in this respect have never been drawn in question. The law under consideration only confers on them additional power to entertain summary proceedings for the surrender of fugitives from labor. But this is a power precisely similar to those they already possessed and exercised, so far, at least, as any constitutional inquiry is concerned.

The question has been often asked, whence the necessity of conferring this power on Commissioners? Why this improvement upon the act of 1793, which has stood for nearly sixty years? The answer is plain and easy. Of late years several of the non-slaveholding States have been disposed to ignore the constitutional obligation to "deliver up" fugitives from service. Laws have been passed absolutely forbidding State Magistrates to entertain proceedings under the act of 1893, and imposing penalties for doing so. New York, I am sorry to say, has not been behind any other State in the manifestation of this spirit. The statute of 1840, under which the defendant is indicted as a felon, will bear witness to this.

Then, in 1842, came the decision of the Supreme Court of the United States, holding that although the state magistrates might, if they chose, exercise these powers, they were not bound to act. The consequence of all this was, that in the great State of New York, for example, there were only three officers to whom application could be made for process under the act of 1793. Those were the Circuit and District Judges of the United States. Now, all who admit that the Constitution entitles the slaveholding States to a law for the rendition of their absconding slaves (and this admission no intelligent man can withhold) must also admit that the law should be effectual for the purpose intended, and not a mere delusion. The law of 1793, had become a dead letter, owing to the recent action of some of the Northern States. Hence, the amendatory act of 1850, the only difference between which and the act of 1793, worthy of a moments consideration, is in conferring power on commissioners and the enlargement of their number.

It has been claimed in the course of this discussion, that Congress has

no power to legislate on the subject of fugitives from service; that the clause of the Constitution in question is a compact between the States, calling for, and authorizing no action of the National Legislature. This question, I admit, was once open to doubt. Mr Webster, whom I hold by far the first Constitutional lawyer in this country, seems to have entertained this doubt. But the subject was set at rest by the decision of the Supreme Court of the United States in the year 1842, and is no longer open to controversy. I repose not more upon the authority of that decision than upon the unanswerable reasoning by which the power ond duty of Congress to legislate on this subject were maintained in the opinion of the court.

I flatter myself that I have answered all the Constitutional objections to this law which are deserving of any serious consideration. Some of these objections have been stated in the extended argument on the other side, in a great variety of modes, forms and sub-divisions. It is urged, for instance, that the alleged fugitive may be deprived of liberty without due process of law, and upon *ex parte* testimony. This, I conceive, is but another mode of saying that the proceeding is summary, and not a suit at the common law in which the right may be finally tried. All objections of this character, in whatever form they may be stated, are fully answered when it is shown that the proceeding authorized by the Constitution is summary and ministerial rather than judicial and final, and this, I trust, has been demonstrated both upon reason and authority.

The decision of the Supreme Court of the United States, to which I have more than once referred, was pronounced in the case of Prigg vs. The Commonwealth of Pennsylvania, (16 Peters, 539) in the year 1842. In holding as that case did that the Fugitive Slave act of 1793 was a Constitutional law, without a dissenting voice among all the nine Judges, I think it covers the whole ground of the present discussion. The act of 1793 authorized no trial by jury. On the subject of the habeas corpus it has been shown to be identical with the act of 1850. It conferred power upon State Magistrates forming no part of the Judiciary of the United States. It authorized summary proceedings, and admitted testimony of the same grade and class as the act of 1850. It imposed pains and penalties for obstructing the execution of the law, a little less stringent than those imposed by the act of 1850, but presenting no difference in principle. In holding that law to be Constitutional, the highest tribunal in the Nation has pronounced against all these objections, and pronounced also in favor of the power and duty of Congress to make laws to effectuate the Constitutional right to the rendition of fugitive slaves. And what other debatable ground is there in respect to the Fugitive Slave Law of 1850? I confess to my poor apprehension, there is none whatever The doctrine of the case of Prigg has been re affirmed by the same Court in a later case. (See 5 Howard, 215.)

It should be added that this very act of 1850 has been before the courts in a variety of instances, and in no case does a doubt appear to have been entertained of its Constitutionality. In the case of the slave "Sims" there was a direct adjudication on the point by the Supreme Court of Massachusetts. As I now remember that case, the slave 'Sims' was in custody under a warrant or certificate granted by a Commissioner pursuant to the act.—The question of the Constitutionality of the law arose in the Supreme Court on habeas corpus. The opinion of the court was pronounced by the venerable Chief Justice Shaw, and the law was sustained. I need not add that this Court is second to no other in every attribute which gives weight to a judicial decision. Opinions to the some effect have been delivered by Judge Conkling, of the District Court for the Northern District of New York, in the case of "Daniel," and by several of the Judges of the Supreme Court of the United States in their charges to grand juries, and on other occasions. In the trials for treason before the United States Circuit Court in Pennsylvania, growing out of the Christina riot, the constitutionality of this act was of course directly involved. But not a doubt on that point appears to have been even suggested by the counsel or the court.

I might, sir, under other circumstances, have contented myself by citing precedent and authority, and leaving this case to the judgment of your Honor, without entering upon the wider field over which this discussion has travelled; and before such a tribunal as I am now addressing, I should not have entertained a doubt as to the result. But this Fugitive Slave Law has been a disturbing element in society, and perhaps in no part of the country more so than in the community in the midst of which this Court now holds its sitting. This prosecution originated in a popular effervescence. Public attention has been drawn to the trial, and will be drawn to its result. The widest possible range has been accorded to the argument against the law, and the declared object has been to produce effect upon the popular mind. It has, therefore, seemed to me proper, in the humble argument I have had the honor to submit, to follow the example set me far enough to show that the authority of this law rests not so much on a mere precedent as on the broad and deep foundations of the Constitution.

The act of 1850 for the rendition of fugitives from service is then a constitutional law. It was enacted to carry into effect an express requirement of the Constitution. It is, therefore, the supreme law of the land, and demands the same implicit respect and obedience which the Constitution itself is entitled to receive from every tribunal and every citizen. The defendant now on trial acted in obedience to this law and his oath of office as Deputy Marshal. For performing this duty he is indicted under the New York statute as a kidnapper. That statute must yield to the paramount authority of the Constitution and laws of the Union. I hold the defendant's justification to be complete.

[Mr. Comstock here proceeded to discuss the provisions of the New York statute under which the defendant was indicted. This statute, he insisted, was unconstitutional and void, on the ground that the State had no power to legislate on the subject of fugitives from service, Congress having seen fit, as early as 1793, to pass a law to carry into effect that part of the Constitution. This power, he insisted, was vested exclusively in Congress, at all events that the action of Congress excluded State legislation. He also proceeded to show that the State statute in most of its provisions was in direct conflict with the law of Congress. His remarks on this subject are omitted, as the decision of the case turned on the constitutionality of the act of Congress in question. He then concluded as follows:]

I join, sir, in the sentiment of congratulation which has been expressed, that this occasion has arisen for the vindication of a public law, on the maintainance of which, in principle and substance, I think the peace of the Union depends. I can see great good in the result. Those who have brought torward this prosecution have expected to find in it a new lever for agitation. In this I think they will be mistaken. They have had the widest possible latitude of discussion, and this is also well. Every objection, every argument which the most ingenious fanaticism could suggest, has now been brought forward and urged with surpassing ability and force. When all these objections, on a full and deliberate examination, shall be found by the calm judgment of this Court to be utterly baseless, quiet and repose will take the place of agitation and strife. I rejoice, therefore, that this prosecution has arisen, that it has arisen in this Court, and under the circumstances which have attended it.

In conclusion, sir, I have only to request that your Honor, upon the law of the case, hold the defendant's justification made out, and direct the jury to render their verdict of acquittal.

ARGUMENT OF C. B. SEDGWICK.

If the Court please, I do not propose to go into any general discussion of the question before the Court. I shall only speak to such points as have been made by Counsel in answer to the opening argument of my associate, and shall leave all that was fully argued by the opening Counsel.

It appears to me that the history of the provision in the Constitution for the rendition of "fugitives from service and labor," has been greatly mistaken or grossly perverted. It was assumed by both the opposing Counsel, that there was much feeling upon this subject in the Convention which framed the Constitution: that it was a subject of great difficulty, and much discussed. Such is, to a great extent, the understanding of the public. It is spoken of as one of the "Compromises of the Constitution," without which it would never have been formed or ratified. It was not so. It was no compromise between sectional interests. The President of the Convention was George Washington. He felt a deep solicitude for the result of the Convention. Before its session was commenced, he had written to the leading statesmen and patriots of the country, for their ideas of what the Constitution should contain. Very different views were entertained by men equally eminent for patriotism and statesmanship, as to the powers which were to be conferred upon, or withheld from, the government about to be established. At least twelve different drafts of Constitution, or plans for a government, were presented to the Convention. They contained the provisions which their several authors deemed important and necessary to be inserted in the proposed Constitution; and so far from this clause being deemed essential, or even important, *not one of their original plans contains one word as to the rendition of fugitives*—not one.

Nor was the subject one of controversy in the Convention. So far from it, it was not mentioned until within twenty days of the adjournment. The Convention assembled early in the summer or spring. This subject was first introduced on the 28th day of August—the Convention adjourned finally on the 19th of September. The first proposition was in terms for the rendition of "fugitive *slaves*." This was promptly opposed from all quarters, north and south, and in that form was withdrawn on the next day. In another form, and with that obnoxious word stricken out, it met with no opposition—passed without question or debate, and unanimously, though there were strong abolitionists in that Convention. Such men as Franklin, Sherman, Wilson and others, assenting to it, which they never would have

done, had they anticipated or believed for a moment, that it was to be used for all time as a shield of slavery and an evidence of their abandonment of principle. So things went on till near the close of the session, when the Committee on style and language reported the Constitution complete.—An original clause on the basis of representation reported by them, contained the term "servitude." This was stricken out, for the reason as then expressed, that "servitude" expressed the condition of "*slaves*," while the words "held to service or labor," expressed the condition of free laborers. The Institution was not then as venerable and honorable in the eyes of saints and politicians, as it has now become. The men then, north and south, expected to see slavery ended at no distant day. Slavery then existed in all the States, except one or two. There was no North and South of diverse and conflicting interests on this question. Upon other topics there were clashing views and interests—as to the basis of representation—taxation and commercial interests—but none on this. That there was any conflict and compromise on this clause of the Constitution, is a modern device of men either ignorant of its true history, or willing to cheat themselves, and anxious to cheat others.

It is contended by Counsel, that we should interpret the Constitution in the light of "surrounding circumstances." It is a fair rule of interpretation. He has mentioned some of the circumstances—that slavery existed in some States and not in others, making such a clause convenient and necessary. He forgets, however, that all the surrounding circumstances should have their just influence. He forgets the important part that we had just gone through a bloody war upon a Declaration asserting inalienable and equal rights for *all men*. He forgets that every leading man of that day, looked forward to the certain and speedy extinction of slavery; that this was expected and looked for by southern public men, particularly, with intense anxiety. He forgets that in view of this fact, every clause in terms recognizing slavery was carefully avoided He forgets that, cotemporaneously, slavery was by the ordinance of 1787 expressly prohibited in all the territory belonging to the Union. He forgets that slave labor was then comparatively profitless, and slaves of low price; that stealing them in Africa and selling them at home, was abhorrent to christianity. All these, and many other most significant "surrounding circumstances" are forgotten or carefully kept out of sight.

Now a "change" in "surrounding circumstances" has led to this change of construction. The subsequent acquisition of Louisiana, with its rich and extensive rice, and sugar, and cotton fields—the profitable employment of slave labor which has resulted—the building up of an irresistable power, swaying and controlling the destinies of the country as well as of parties, are the "circumstances" which "surround" the construction of the instrument now, and bend and warp it from its true and honest meaning.

Truly and rightly considered, there is nothing in the "surrounding circumstances" to prevent us from giving this clause the construction favorable to freedom.

Neither is it true that the law of 1793, so far as it relates to the return of "fugitive slaves," has been "generally acquiesced in" by the country. At an early day it was attempted to be enforced in Boston. They met the attempt as they did the attempt to land the tea in Boston Harbor. The slave was liberated by open violence, in the face of the court; and no prosecutions for "treason" followed, nor was the "Union" endangered. It is much to be regretted that the spirit of the fathers has been quenched in the bosoms of their children. It was extremely rare that the law was sought to be enforced, until quite recently.

The feeling against its execution has been universal and irresistable The Counsel upon the other side [Mr. Comstock] has seen the time—and it has not yet passed—when, if a fugitive from this southern prison-house knocked at his door, hunted and weary, his hand and heart would be open—he would proffer bread, and not chains—counsel and kindness, and not a prison. He would pass him along and not obstruct his journey. Nor would the prisoner himself have acted differently. This is practical nullification—moral treason—it is bringing the law into contempt. And yet the Counsel knows—none knows better—that this is the universal and unchangeable feeling and sentiment of the North; and it is idle to seek to disguise it. The law is contrary to justice and natural right, and to all the better feelings of our nature. All human sympathies are arrayed against it. But for party reasons, the law could no where be executed at the North. What was the result of the case to which I have alluded in Boston? The hunted fugitive was not marched off in that dark hour which precedes the dawn—before "the misty morn stands tiptoe on the distant mountain tops." He vanished to the North, and not to the South. The Boston boys took the law into their own hands, and there was no great fuss made about it—no crowd of hungry and boding politicians stood by, to predict the speedy "dissolution of the Union!" It is not true that the law has been acquiesced in, nor will it ever be acquiesced in, till we are ready to receive the yoke ourselves. History is an unsafe guide in the construction of Constitutions—it is too liable to perversion—too susceptible of untrue reading. The adage of "lieing like a bulletin," is likely to be superseded by "lieing like history."

It is also said that "honesty and good faith" should control in the construction of the Constitution. A very just and proper rule, truly. But honesty and integrity should not, like the Premier's "reciprocity," be "all on one side." If it was intended, after what passed in Convention, that "slaves" should be reclaimed, and their capture winked at under a doubtful

clause, for the few years it was then supposed slavery was to continue, good faith requires they should cease, before precedent and usage, and forced construction become law, and new enactments make the false construction perpetual.

I have no fear that the rendition of slaves would continue, if the Constitution was destroyed and the Union dissolved. Equally idle is the fear that we are to be overrun by a general stampede of liberated slaves. This is the idle talk of the schoolboy, or the mean appeal of the demagogue, and ill befits this place and occasion. What is to induce this irruption? A few come here to escape the lash of the overseer, prompted by a thirst for freedom; but with freedom, not one of them but would prefer the South. Equally idle is the assertion that Jerry was rescued by "an ignorant and lawless mob," *because he wa s a slave*, and not because he was a *freeman*. He was rescued because he was a *freeman* by those who being themselves *free*, knew the value of the blessing.

The Counsel says our hostility is not to the law, but to the Constitution; that we are enemies to the Constitution. This is not true. The real enemies of the Constitution, are those who seek to give it the construction for which the Counsel contends. I would not so dishonor it. I love it, I respect it, *only* because I believe it was intended for no such vile use as upholding and protecting slavery; and that, rightfully understood, it will bear no such construction. Its real enemies are those who would expose it to universal contempt, by making it the prop of slavery. All these considerations are, however, in some measure foreign to this case and its merits.

Whatever construction may be put upon the Constitution, and this law, there can be no doubt as to the want of judicial power in the Commissioners. It is conceded by counsel on the other side, that if this power is given to the Commissioners, the law is unconstitutional. This was so stated in terms by the opening Counsel; and is substantially conceded by the other.

To justify the prisoner, these thing are necessary: That the clause of the Constitution includes the case of a fugitive *slave:* and that the law of 1850, in seeking to confer jurisdiction on Commissioners, is itself Constitutional and valid.

I have never doubted the Unconstitutionality of this law, in this particular, which is essential to the prisoner's justification, and this argument has strengthened my conviction. If I can show that this law gives judicial authority, and a right of final trial of the question of freedom or slavery to the Commissioner, it is conceded to be Unconstitutional, for several of the reasons stated by my associate—for not giving the right of trial by jury—for admitting *ex parte* testimony, and others.

It is, however, claimed that the hearing or proceeding before the Commissioner is merely a "preliminary investigation," not, in any sense, a trial.

We claim that the Commissioner under this law is a Judge in purpose and effect. That he tries and adjudges upon a claim, and that his judgment is recorded and is final. If that be so, the law is conceded to be Unconstitutional. The true question and point in controversy, then, is the true office and function of the Commissioner.

Counsel say that the provisions of the Constitution in regard to the return of "fugitives from justice," and "fugitives held to service and labor," are precisely alike, and authorize and require the same legislation. Let us see. I now read the second sub-division of Sec. 5, Art. 4, of the Constitution, in respect to "fugitives from justice:"

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

Mark the close of the sentence—"Shall be delivered up, *to be removed to the State having jurisdiction of the crime.*"

Now, read the third sub-division:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may due."

They stop at different points—apply to different persons. In one case, the end is the delivery of the fugitive to the *officer of the law for trial*—in the other, his delivery to *the claimant to be disposed of as he pleases.*

In the one case, he is to be removed in the charge and custody of the law—for what? For *trial*, according to the forms of law—by jury—upon indictment regularly found and presented. He is confronted with his accuser and his witnesses—the judgment of the Court becomes a Record from which he may appeal, upon which he may assign error, and avail himself of all the forms and safeguards of the law. He is demanded by the Executive of one State from the Executive of another. So far as his extradition is concerned, it is purely and merely an Executive proceeding—*all judicial proceedings are to follow.* In all this proceeding, the claimant or injured party, is not present, either in person or by his agent or attorney.

In the other case, the claimant comes in person for his property—he prefers a claim for a personal chattel—the *thing* claimed has language and says, "I am not property—I am not a brute, but I am a man and a *freeman.*"—And here is an issue upon the claim preferred, *which must be tried.* It is not pretended that this question is not of sufficient *importance* both to claimant and claimed, to make a jury trial proper within the limit of the Constitution as to amount. But it is said that it is not "a suit at common law." It falls directly within the definition of such a suit, as read in the

Constitution, as decided by the Supreme Court of the United States. I was surprised to hear it so confidently asserted by Counsel, that "no lawyer, no person who had ever read a page in any law book, would assert that it was a suit at common law." I cannot account for this savage attack upon the supreme Court, and for calling them fools. This very point was decided in Prigg's case, from which Counsel quoted so liberally, and by Justice Story himself, almost on the page from which Counsel read. In the case of *Prigg* vs. *Pennsylvania*, the court say—

"He (the slave) shall be delivered up on *claim* of the party to whom such service or labor may be due. * * * A *claim* is to be made. What is a claim? It is, in a just juridical sense, a demand of some matter, as of right, made by one person upon another, to do, or to forbear to do, some act or thing as a matter of duty. A more limited, but at the same time an equally expressive definition, was given by Lord Dyer, as cited in Stowell vs. Zouch, Plowden 359, *and it is equally applicable to the present case*, that 'a claim is a challenge by a man of the property or ownership of a thing which he has not in his possession, but which is wrongfully detained from him.' The slave is to be delivered up on the claim."—16 *Peters*, 614-15.

In *Cohens* vs. *Virginia*, the Court say:

"What is a *suit?* We understand it to be the prosecution or pursuit of some *claim, demand, or request.* In law language, it is the prosecution of some demand in a court of justice. 'The remedy for every species of wrong is,' says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' The instruments whereby this remedy are obtained, are a *diversity* of *suits* and actions, which are defined by the Mirror to be 'the lawful demand of one's right;' or, as Bracton and Fleta express it, in the words of Justinian, '*jus prosequendi in judicio quod alicui debetur*'—(the form of prosecuting in trial or judgment what is due to any one.) Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a right.

"*To commence a suit, is to demand something by the institution of process in a court of justice; and to prosecute the suit is, according to the common acceptation of language, to continue that demand.*"—6 *Wheaton*, 407-8.

In the case of *Parsons* vs. *Bedford et. al.*, the Court define the term "common law," with special reference to its meaning in the amendment to the Constitution, which secures the right of trial by jury "in suits at common law." The Court say:

"The phrase 'common law,' found in this clause, is used in contradistinction to *equity, and admiralty, and maritime jurisprudence.* The Constitution had declared in the third article, 'that the judicial power shall extend to all cases in *law* and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority, &c., and to all cases of admiralty and maritime jurisprudence. It is well known that in civil causes, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that this dis-

tinction was present to the minds of the framers of the amendment. *By common law, they meant what the Constitution denominated in the third article, 'law;' not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered; or where, as in the admiralty, a mixture of public law, and of maritime law and equity, was often found in the same suit."* * * *

"In a just sense, the amendment, then, may be construed to embrace all suits which are not of equity and admiralty jurisprudence, whatever may be the peculiar form which they may assume to settle legal rights."—3 *Peters*, 446.

Such are the definitions given by the Supreme Court of the United States of the terms "claim," "suit," and "common law," as used in the Constitution and amendment.

The counsel, then, must settle this controversy with the Supreme Court.

But when and where is the question raised under this law to be decided? Counsel say in the State where he is to be taken. But the Constitution contemplates no *removal*. The question is, whether he is to be *discharged* or *delivered up* on this claim as property. The delivery to the claimant is the final proceeding contemplated by the Constitution. The language of the sixth section is specific and significant—"In no *trial* or hearing under this act," &c. The person or thing claimed is to be taken with or without process before the Commissioner, Court or Judge, whose duty it is made "to *hear and determine* the case of such claimant, in a summary manner." This is technical, legal language, describing a *trial* and a *judgment*.

It is no less a trial for being summary. The question is, whether it is a final proceeding, determining the claim, or only an informal preliminary to a more formal and solemn adjudication. Its being summary, only makes it barbarous and inhuman, but none the less a *trial*. To proceed with this sixth section—"Upon satisfactory proof" made to the Commissioner by deposition or affidavit, or other satisfactory testimony, and with proof also by affidavit of the identity of the person whose service or labor is claimed to be due as aforesaid, "that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid." This certificate is made conclusive of the claimant's right,

and "prevents" all molestation by any process issued by any Court, Judge, or Magistrate, or other person whomsoever.

The Commissioner under this section is to decide three things:—

1st. The *status* of the person claimed.

2d. His escape.

3d. His identity.

Upon all these points he is to be satisfied by proof, and is to decide.—Upon this judgment or determination, he is to be DELIVERED UP—as property—TO AN OWNER. By it, he ceases to be a freeman—he is adjudged to be a slave. All this is recorded, or certified. Here the Constitution leaves the matter; the fugitive transformed into property in the hands of its owner, in the State and place where the claim is made, and where the claim has been tried and adjudged.

As to the authority of "removal" given by the certificate, there is not a word in the Constitution conferring any such power. It is entirely without authority—a stretch of the law beyond any dream of the framers of the Constitution, and a naked usurpation. So also is the provision of the 9th section, by which, on an affidavit of "fear of rescue," (and it is always made,) the fugitive is sent back at the expense of the public treasury, and the Government officers become "common carriers" of merchandize.

It is now manifest that the ONLY TRIAL provided or contemplated by the Constitution and laws, is this trial before the Commissioner. None other is secured. Mark the distinction. The "fugitive from justice" is sent back TO BE TRIED, with no judgment on his guilt or innocence. No such thing occurs in the other case. He is ADJUDGED TO OWE SERVICE, and is delivered up as property. No trial follows, or is designed to follow any where.—No appeal is allowed or provided for. The suit is ended, finally. The certificate is conclusive, and can in no way be disturbed. If he sues for freedom, it is an entire new suit—before a new forum—under a different jurisdiction. It cannot be in the United States Courts, but must be in a State Court.

Let us push this argument one step further. This claim may be prosecuted in a slave State. A free colored person in a slave State may be claimed as a fugitive, and may be delivered up as a slave. In such case, he can be taken from the Court to the Auction Block—from the temple of Justice and her chosen ministers, to the shambles of the auctioneer, and the hungry crowd of speculators in flesh and blood.

In saying this, I have no desire to impeach the fairness of Southern tribunals. On the contrary, as has been said by Counsel for the prisoner, their decisions on questions of this nature are marked by fairness and liberality; and in this particular afford a striking contrast to those of Northern Courts

and officers, which are distinguished for any thing but fairness and humanity. I regret that the distinction between them is so humiliating.

There is nothing in the Constitution requiring the claimant to take the fugitive back *to the State* from which he is alleged to have escaped. Suppose him to be a freeman, unlawfully seized by kidnapping, will he be likely to be taken back to the claimant's residence? Or will he be more likely to be sold at the first slave market, and be taken to the rice and sugar plantations from whose deadly and pestilential fields no traveller returns? I am supposing no idle and imaginary case! The report of the Select Committee of our Legislature, of which our fellow-citizen, Mr. VICTORY BIRDSEYE, was Chairman, made to the Legislature, just before the passage of this State law, mentions several well authenticated cases where freemen have been seized and sold, and held as slaves. Indeed, it is a regular trade near the borders. You all know the case of Alberti, in Philadelphia, recently convicted, and in whose felon fate the Executive and Legislature of a neighboring State took so deep an interest. But if this *may* happen in a single case—not if it *has happened*—if it *may by possibility* occur that one man, I care not how humble, nor of what complexion—the lowest—the most abject—may be thus doomed to this hell of slavery, it is enough not only to found an argument upon, but to found our laws upon for all time to come.

I have spent some time upon this point, because here the Unconstitutionality of this law is demonstrable on admitted principles, not controverted by the opposing Counsel. They must overthrow the position that the proceeding before the Commissioner is A TRIAL, upon which he must exercise judicial authority; because, if a trial, it is conceded that all the established and cherished safeguards of the common law are destroyed. If it is not A TRIAL—I repeat the question—when and where is the trial raised by the claim, to be had? When and where is to be the final proceeding of which this summary one before the Commissioner is the beginning? Does the law any where provide it? If so, point out the provision which contains it. There is no such provision; and the absurdity of the assertion is manifest on its face.

This is a new question, as yet open for construction. No Court of competent authority has passed upon it. It has received a practical comment. In the case of Long, GEORGE WOOD, the Counsel of the Union Safety Committee, and certainly an able lawyer, withdrew the proceedings before the Commissioner, and the case was transferred to a judge.

I pass to another point—the suspension of the writ of HABEAS CORPUS. Counsel say that this act does not suspend it any more than did the act of 1793—a poor argument, if either actually suspends it. The office of this writ is pretty well settled, and understood among lawyers. Government has sought always to limit and restrict it—the advocates of popular liberty

to enlarge and sustain it, as one of the surest safeguards against oppression. The objection to this law, is, that if it allows the writ at all, (which is doubtful,) it restricts and narrows the enquiry of the judge on the return of it to the sole question of the regularity of the certificate—making that, if in due form, CONCLUSIVE. We contend, on the other hand, that the judge or court, on the return of this writ, has the right of examining into the regularity of all the proceedings anterior to the certificate, and particularly of examining and deciding AS TO THE JURISDICTION OF THE OFFICER GRANTING IT. This right, this law denies us. The CERTIFICATE is made CONCLUSIVE. Allowing us merely to criticise the form of this paper, on the return of the HABEAS CORPUS, in effect denies us the privilege of the writ. It is no answer to say that independent judges will not regard such illegal restrictions upon this writ. The law which attempts to restrict it, is unconstitutional and void. I am aware that judge CONKLING, with a manly independence which reflects credit on the judicial office, allowed this writ in the case of Daniel, and went behind the certificate to the question of jurisdiction, as he had a clear right to do;—but it is as clear, that he went beyond the restrictions attempted to be imposed by this law, and he has been threatened with impeachment for his audacity. But in most cases, judges of less firmness have refused the writ altogether, or confining themselves to the regularity of the certificate, have made it of no value.

To illustrate this farther. Under the tenth section of the act of Congress, a claimant may start with a record of judgment in his pocket. He may go before a State Court in the absence of the opposing party, and upon a hearing entirely EX PARTE and without a jury, have it adjudged, and the judgment made of record, that the person proceeded against is a slave and has escaped, and also of his identity. This record is made conclusive upon the two points of SLAVERY, or the STATUS of the person, and of the fact of escape. Upon further evidence, if NECESSARY, of identity, he must be delivered up; the record upon this EX PARTE trial in a State Court being final on the two main points. Under a proper exercise of the writ of liberty, we should have a right to question such a record—to examine the regularity of such proceedings—to question the jurisdiction, and to inquire whether, upon sound and established principles of law, such proceedings can stand. But by this act, they are final and conclusive. The very attempt to confer this judicial power on a State Court is unconstitutional; and the argument of my associate on that point has not been and cannot be met. In this very case of Jerry, the proceedings are founded on a record of a State Court. The power of the Commissioner to issue this warrant, depends on the validity of that proceeding; yet we are forbidden by this act to go back of the Commissioner's certificate. The privilege of the HABEAS CORPUS, under such restrictions and limitations, is of no sort of consequence.

But it is said that the constitutionality of this law has been passed upon and decided by the Supreme Court of Massachusetts, by various Circuit Judges of the United States Courts, and in the Pennsylvania trials.

In the cases in Pennsylvania, the only question before the Court was, whether the acts then complained of were treasonable. Certain peripatetic statesmen had pronounced all resistance to this law "treason." Judges had volunteered such opinions in their charges to grand juries. The only thing effected by the Pennsylvania trials was to show the utter absurdity of such opinions, and their consequent threatening. Nor have I much respect for the authority of the Massachusetts Court. It was an opinion pronounced by Judges who felt the pressure of a great public excitement. It was pronounced from a Bench literally surrounded by the chains of slavery, surrounded by arms, amid which laws are silent, and to reach which the ministers of justice had to bow down and crawl. For one, I am not satisfied by such authority.

It is contended that the State law under which this indictment is passed, is unconstitutional. The right to protect the liberty of every citizen within its limits from unlawful seizure, results necessarily from State sovereignty. The section in question in this case admits the validity of laws for the removal from this State of persons held to "service or labor," and only protects citizens from seizure without the authority of any law, State or National. The section immediately preceding makes it a misdemeanor for State magistrates to assist in the removal of fugitives, except in accordance with the provisions of the State law, and its beneficent and humane provisions. It is nowhere denied, by respectable authority, that this State has a right to exercise such a control over her own officers. But if our State law is in conflict with the Constitution because it is tinctured with justice and some regard to human rights, still this section under which the indictment is found remains untouched. The removal must be under the authority of *some law:* that is all the section requires. The Pennsylvania statute which was pronounced unconstitutional in the PRIGG case, differed from ours in attempting to punish any attempt at removal not in accordance with *that law*, although it might be in accordance with the law of Congress. The question of the Court on this point to counsel, was pertinent, and remains unanswered. The section, as originally reported in the Legislature, was liable to the counsel's objection, and was in substance like the Pennsylvania statute, but was so amended as only to punish a seizure and attempt to remove a citizen without the authority of any law, either State or National.

I have now, may it please your Honor, replied to all the arguments which in my judgment require an answer. In conclusion, I have only to say, that I am glad this case has arisen. I was sorry to hear the counsel say that "fanatics had dogged the Grand Jury" to procure this indictment, against

the judgment of the prosecuting attorney. The question presented is a grave and important question. This prosecution was undertaken for no unworthy purpose, and in no spirit of revenge or unkindness. No one knows better than the prisoner, that he is prosecuted by persons wishing him no injury, but anxious for an opportunity to try, before the judicial tribunals of the country, the validity of this law. They wish also to know and understand whether there is any virtue in the laws of this great State for the protection of its citizens. If the State law is constitutional, it is eminently just, and should be maintained and enforced. If it is not, and affords us no protection from unlawful and unauthorized seizures, we desire to know it, that we may put ourselves under some jurisdiction better able to preserve and care for the liberty of its citizens.

JUDGE MARVIN'S CHARGE.

Immediately on the conclusion of the argument in this case, his Honor, R. P. Marvin, presiding Judge, charged the Jury as follows:

The defendant Allen is on trial charged with the crime of attempting to kidnap.

The indictment is founded upon the 17th section of the act relating to fugitives from service or labor, passed in 1840. In that section it is declared that "every person who shall, *without the authority of law*, forcibly remove or attempt to remove from this State any fugitive from service or labor, or any person who is claimed as such fugitive, shall forfeit, &c., and shall be deemed guilty of kidnapping." He has interposed a special plea, justifying his acts under the law of the United States passed in 1850, known as the Fugitive Slave Act. He has set forth the proceedings by the Commissioner, the warrant issued by the Commissioner, and the arrest under the warrant.

The people, in reply to that plea, have taken issue upon the facts averred in it.

The parties, by mutual stipulation, have admitted and agreed upon all the facts embraced by the issue. On the part of the defence, the validity of the State law under which the indictment is framed, is questioned. It is insisted that it is in conflict with the Constitution and laws of the United States. On the other hand, counsel for the people insist that that provision of the U. S. Constitution touching the escape of persons held to service or labor, has no application to slaves, and if it has, that the act of Congress passed in 1850, and to which the defendant appeals, is not warranted by the Constitution of the United States.

These are grave questions. They are purely questions of law. Counsel so regard them. They have addressed their arguments to the Court, and have brought to the consideration of these questions much learning and great ability.

It is understood that the determination of this case depends upon the validity and construction of these laws.

I shall proceed briefly to give my opinion upon the questions raised, with some of the reasons for such opinion.

It is argued that the provision of the Constitution relating to persons held to service or labor in one State, escaping into another, has no application to slaves. On the other hand, it is insisted that the main object of this provis-

ion was to secure the return of slaves escaping from one State into another. One of the rules by which to ascertain the meaning of a law is to ascertain the circumstances at the time the law was enacted, with a view of ascertaining the subject or object upon which it was designed to act.—Counsel have referred to this act, and have brought under consideration the condition of the country and the States touching this question at the time the Constitution was adopted. It is proper, before we examine the provisions in the Constitution to which references have been made, that we should advert to the antecedents of the Constitution.

When the Colonies threw off their allegiance, they became States. Each State became sovereign and independent.

By the law of nations, every independent *State* or section has jurisdiction over all its territory, and all the property and persons within its limits. It has power to make war and peace, to enter into treaties and alliances, and to do any and all acts pertaining to sovereignty. These principles are true, theoretically and practically, as regards independent States. They were not, however, practically resorted to by the States upon the Declaration of Independence, as the Colonies had previously by delegates constituted a body or Congress to represent their general interest. The war of the Revolution was still pending, and the Congress agreed upon the articles of confederation, which were subsequently ratified or adopted by the States. These articles impaired in some degree the full and complete powers pertaining to a *State*. They were, however, extremely defective, and did not confer upon the Congress or Government the established powers essential to the maintainance of a *self-sustaining*, independent Government.

After the war, these defects soon became obvious. It was essential that every General Government should possess the power of taxation, the power to levy and collect duties, and to regulate commerce, &c. &c. The statesmen of that day saw and deplored the feeble condition of the Government, if it may be called a Government, under the Articles of Confederation.—They interchanged views, and Washington corresponded with prominent statesmen of the day in different States. The leading idea then was, that Congress should be clothed with much greater powers over commerce, and that it should have power to levy and collect taxes independent of State action. These views were, from time to time, enlarged and extended to other subjects.

The Convention assembled for the purpose of revising and amending the Articles of Confederation, and to establish a more efficient Government.—The States were represented as States, and the voting was by States. Casting aside the Articles of Confederation, and each State was sovereign, independent, a *nation*. Each State was as independent of any other State as England was of France, or France of England. One State was in no re-

spect responsible for the laws enacted in another State, or for its domestic institutions or policy. It is important to keep constantly in mind that without any general and common government for the States, each State would have been a State or Nation possessing all the attributes and powers pertaining to any sovereign and independent State.

The delegates to the Convention met, and entered upon the work, a great work. A Government was to be established with *powers* to be derived from the people of several other Governments. All can see that this must have been a delicate and difficult undertaking. A portion of the sovereign power of the States, or people of the States, must be transferred to the new Government, which must act upon the States and the people of the States. What powers should be conferred upon and transferred to the new Government? Where should the line of demarkation between the State powers and the powers of the General Government be drawn? What powers should be held and exercised in common by the States and the General Government, and what should be *exclusively* vested in the latter, and what should be retained unimpaired by the States, were questions of the greatest magnitude, and they were the questions to be solved by the Convention.—The Convention entered upon the work impressed with the necessity of conferring upon Congress large powers in relation to taxation and commerce, and also the necessity of creating a Government which should be capable of sustaining its own existence and perpetuating itself—a self-sustaining, independent Government. They had before them the Constitutions of the States, in which the principle of a division of the powers of Government into legislative, judicial and executive, had been adopted; and they resolved to adopt the same principle. But in carrying this principle into effect, it was necessary to pursue a very different course from that adopted by a Convention met to prepare a State Constitution. Recurring to the maxim that in Republics all power is inherent in the people, the whole body politic, and that all power conferred upon and exercised by the Government of a Republic is derived from the people, in framing a State Constitution it is only necessary to say in a line, as is said in our Constitution, "the legislative power shall be vested in a Senate and Assembly." This simple declaration of the people will confer upon the State Legislature all the legislative power which the whole people possess. But they have never deemed it prudent or safe to confer *all their power* upon their Legislature. Hence, in the State Constitutions those things which the people are unwilling to permit their Legislature to do, are specified in the form of a bill of rights and other restrictive provisions inserted in the same Constitution, containing the general grant of legislative power.

This much could not be adopted in framing the Constitution of the United States. A general grant of power, in the language used in the State Con-

stitutions, without any restriction, would have transferred all the political power of all the people of the States, and would at once have annihilated the States and their Governments. To have granted the power generally, and then to have attempted to specify and enumerate by way of exception or restriction all the powers which the States should exercise, would have been idle, and would have proved an entire failure.

It was, therefore, necessary that, in the Constitution for the General Government which they were attempting to enact, all its powers should be clearly specified. These powers were to be granted and conferred by the people upon the new Government, for the common benefit of all. This explains the reason and necessity for the *specification* of the powers in the Constitution of the United States. It is important to keep this explanation in view. Very important consequences flow from the different principles upon which the Constitution of the States and the Constitution of the United States are constructed. In construing the former, we start with the position that the legislative power extends to all subjects and cases, unless in the particular case some provision can be pointed out in the Constitution limiting or restraining the legislative power; and after the adoption of the United States Constitution, the further qualification was to be added, that the law does not conflict with it, or any laws of Congress passed in pursuance of it. In construing the Constitution of the United States and the laws of the United States, the reverse of this rule is adopted. We do not assume that the power to enact the particular law existed; but it must be specifically pointed out in the Constitution.

The Constitution first provides for a legislative body, to exercise all the legislative powers *granted.*

The powers conferred upon Congress are clearly specified. They are important, though not very numerous. Many of them have been brought into view in the present discussion, as it has been supposed, by learned counsel, that they have a bearing upon the particular questions under consideration.

It may be remarked generally, that the Constitution was framed upon the principle, that as to all foreign matters and interests the General Government should have control; that as to domestic matters, the internal regulations of the States, &c., &c., the States should retain their powers and jurisdiction. This general line for the division of powers between the General Government and State Governments was recommended by Jefferson, in a letter from France, if our recollection serves us correctly.

The powers to levy and collect taxes, duties, &c.; to regulate commerce; to coin money; to declare war; to raise and support armies; to furnish and maintain a navy, and some other powers, were granted to Congress, and then generally power to make all laws necessary and proper to carry into execution the powers specified and all other powers vested by the Constitu-

tion in the Government of the United States, or in any department or office thereof. The treaty-making power was confided to the President by and with the advice of the Senate. And the States were prohibited from entering into any treaty, alliance or confederation. It is important to notice this provision. The judicial power was clearly defined. It was necessary, if the Government was to be an independent, self-sustaining Government, that it should have an independent judiciary to expound the Constitution and the laws of the United States, and the Constitutions and laws of the States, when they should be in conflict with the Constitution and laws of the United States.

If the new Government was to prove successful, it must work in harmony with the State Governments, and this could not be expected unless there was a power somewhere to settle and decide controversies arising between the different Governments and controversies between the States. The Constitution and the laws of the United States made in pursuance of it, and all treaties made under the authority of the United States, are declared to be the supreme law of the land; and all Judges in every State are bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding. We thus see the principles upon which the Convention proceeded in framing the Constitution.

We have adverted to many of the powers which were to be granted to the new Government. And here it may be well to pause, and recur to the remarks already made as to a *State* or *Nation*, as defined by writers upon national law. And let us enquire what would have been the condition of the States had the Convention gone even further—if they had omitted to insert any provision in the Constitution, for instance, in relation to the fugitive from justice? It is to be kept in mind that the new Government was to have no powers except such as should be granted, and that the States were to retain all their original powers unimpaired, which they had not granted to the new Government, or which were not prohibited by the Constitution to the States. This principle was adopted, as a matter of precaution, as one of the amendments to the Constitution.

By the law of nations, one State is not bound to surrender to another State a criminal who has fled from the latter to the former. The giving up of fugitives from justice by one independent nation to another, is a matter regulated by treaty. But, as we have seen, the States were to be prohibited from entering into any treaty, alliance or confederation, and this was undoubtedly necessary to ensure the success of the Government to be brought into existence by the Constitution. If, then, the provision relating to any person charged in one State with treason, felony, or other crimes, fleeing from justice into another State, had not found a place in the Constitution, the consequence would have been, that crimes might be committed in one

State, and the criminal, by passing over the line into another State, would be entirely safe, unless the State into which he entered should, of its own accord, choose to surrender him to the authorities of the State where the crime had been committed. The States would have had no power to enter into a treaty for the mutual surrender of criminals. It must be obvious to all, that great danger to the harmony and peace of the States would, in time, have arisen. To obviate this and to ensure the punishment of criminals, the simple but efficacious provision to which our attention has been so often directed in the arguments, was inserted in the Constitution.

The next provision in the Constitution is the one relating to persons held to service or labor in one State, under the laws thereof, escaping into another. It is the provision directly under consideration in this case, and to which our attention must now be specially directed.

It is argued that this provision does not relate to *slaves*. This argument rests mainly upon the fact that the word *slave* is not used in the provision, and that the words used may be satisfied by a reference to apprentices and other servants. It has been argued that this provision in the Constitution met with little or no opposition in the Convention; that when first proposed it contained the word *slaves*, which was stricken out; and that finally, the language as we now find it was agreed upon, and the provision adopted without opposition. My recollection of the history of this provision accords substantially with the gentleman (Mr. Sedgwick) who last addressed the Court, that this provision met with no serious opposition. It was, under the circumstances, deemed a suitable and proper provision.

The Convention had been greatly agitated with another question, which was affected by slavery, and the difficulties were so great that the Convention came near dissolving without producing any plan of a Constitution. That question related to representation in Congress. The Southern States insisted that slaves should be taken into account in fixing the basis of representation. On the other hand, the free States insisted that as slaves were property, they ought not to be regarded in fixing upon the basis of representation. All parties regarded slaves as property. They were regarded as a peculiar kind of property. They were men, and composed a portion of the community. This question, so vexed and difficult, was compromised, and the basis of representation and taxation, as we find it in the Constitution was adopted.

The provision relating to persons held to service or labor met with little or no opposition, and the question is, what is its meaning. Until within a recent period, I am not aware that it has ever been seriously doubted that it referred to slaves, and that its main object was to provide for their return when they should escape from one State to another.

A leading rule of construction is to endeavor to ascertain the objects

and intention of the Legislature passing a law, and then if the language employed will justify, so to construe the law as to carry into effect such object and intention.

I agree to the rule that laws and Constitutions should be construed humanely, and in favor of liberty, when they will bear that construction, and it is not clear that another meaning was intended. We must look to the state of things existing when the Constitution was adopted. At that time slavery existed in a majority of the States. Slaves were regarded as property; a peculiar species of property; they were men, possessed of reason and volition. The common law did not regard them as property. They were such only by the local laws. Now, if no provision had been inserted in the Constitution upon this subject, what would have been the condition of the States touching the escape of slaves from one State to another? The State to which he escaped would have been under no obligation, by the law of nations, to return him, or to permit his master to come into the State and remove him. It would have been entirely optional with the State, whether the slave should be returned. The States, as already stated, could make no regulation upon this subject by *treaty*.

When we consider that slaves were regarded as property, and see the facility with which they could escape into free States, can we suppose that those holding slaves would neglect to call the attention of the Convention to this subject, and require that some provision should be made in the Constitution touching the return of their slaves, and yet that the Convention should insert a provision relating only to apprentices held to service or labor? The subject was one which, if not provided for, would be likely to disturb the amicable relations of the States; and it was of the utmost importance to the Government to be constituted under the Constitution, that there should be *amity* at least between the States. For the purpose of preserving peace and amity among the States, this power to enter into any agreement or compact with each other, or with foreign powers, or to engage in war, was abrogated. All can see clearly that the General Government cannot go on and maintain itself if the States are allowed to become involved in war with each other. The General Government then would have a direct interest in providing for, and removing all the causes likely to disturb the amicable relations of the States. The escape of slaves from one State to another, which other would be under no obligation to return them, or permit them to be returned, was regarded as a subject likely to involve the States in disputes and conflicts, and the Convention provided in the Constitution, that "No person held to service or labor in one State, *under the laws thereof*, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor,

but shall be delivered up on claim of the party to whom such service or labor may be due."

This describes the condition of the slave and person held to service or labor in one State *under the laws thereof*. All cotemporaneous history shows that this provision related to slaves. Only a few years after the Government went into operation, Congress passed an act respecting fugitives from justice, and persons escaping from the service of their masters. This is the act of 1793. The execution of this law was applied to slaves escaping from their masters. No inference can be drawn against this view, from the fact that the proposition, as originally presented to the Convention, contained the word *Slave*, and that the language was changed to its present form. I have always supposed that many of the great and good men in that Convention from the South, entertained the hope and the belief that at some future time, perhaps not distant, steps would be taken by *each State*, where slavery existed, to get rid of it as an evil, and they preferred that the word Slave should not appear in the Constitution. Their hopes and expectations have not been realized, but not in consequence of any act of theirs, nor in consequence of any provision of the Constitution. That is not responsible for the existence of slavery, nor for its continuance. Nor are those States in which slavery does not exist responsible for slavery, or its continuance.

Slavery is a *State matter*—a State institution solely, established, regulated, and sustained, by the particular State in which it exists, and upon that particular State rests the responsibility of its existence and continuance As a citizen of New York, I repel the idea that this State or its people are responsible for slavery in Maryland or Virginia. We are no more responsible for their State institutions than they are for our State institutions. As neither has a right to interfere with the internal regulations of the other, so neither can be responsible for the manner of ordering and managing those internal State concerns. As to these, the States are as sovereign and independent now as they were before the Constitution of the United States was adopted.

The Constitution of the U. S. is not an instrument defending, sustaining, or supporting slavery. It does not profess to interfere with it. It regarded slavery as *existing in the States*, and it provided for contingencies which might happen, and which might, if not provided against, lead to collisions between the States, and endanger the peace and harmony of the States. The particular provision under consideration, says, in substance, to the States, so long as persons are "held to service or labor *in one State under the laws thereof*, if they escape to another State, the latter shall not use its powers as a sovereign State to discharge the person from such service or labor, but such person shall be delivered up on claim." To this extent,

and to this extent only, is responsibility increased by the Constitution of the United States. There is not a word in the instrument encouraging slavery. It is regarded and treated as a State institution.

But it is further argued that if this provision of the Constitution in question does apply to slaves, then, that it is a provision executing itself: in other words, that the United States legislation was not necessary, and that both the Acts of 1793, aud 1850, are not warranted by the Constitution of no United States. A large class of powers are specified and conferred upon Congress, and the power is conferred to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officers thereof. The provision in question declares that the person escaping from service or labor, shall be delivered up on claim of the party to whom such service or labor may be due. The manner of making the claim, and of delivering up to the party claiming, are not specified in the Constitution. A Constitution generally contains principles, fundamental rules, and avoids going into detail, leaving the Legislature to act upon the principle, and declare the mode and manner in which it shall be carried into effect. It would seem that some legislation was proper, if not absolutely necessary. It would be dangerous to permit the claimant to execute this provision of the Constitution, by seizing and re-taking his slave. It would be likely to lead to a breach of the peace. It was held in the case of Prigg vs. Pa., 16 Pet. R., that the owner of a slave might seize him wherever he found him in the United States, and remove him to the State from which he escaped, without process, when he could do so without a breach of the peace. It does not follow, however, from this decision, that Congress cannot legislate upon the subject. In the same case it was held that Congress could legislate, and that the Act of 1793 was Constitutional. It is said this precise question was not involved in Prigg's case. It frequently happens that the Judges of the Supreme Court of the U. S., discuss questions which it is not absolutely necessary in the particular case, to pass upon. These opinions are at all times entitled to great weight, though they may be *obiter* in the particular case. In Jones vs. Van Zandt, 5 How, 229, the Constitutionality of the Act of 1793 was necessarily involved, and it was passed upon. The opinions delivered in Prigg's case were referred to as authority. This disposes of the question of the power of Congress to act upon the subject.

It is insisted that the Act of 1850 is unconstitutional. Much stress is laid upon the appointment of Commissioners. I might content myself by a reference to the decisions and opinions of the United States Judges, in the Circuit and District Courts, touching the entire Constitutionality of this law. It is, however, claimed that this case is important, that it is the first

case where the law has been brought under consideration in a State Court, and that its provisions ought to be passed upon here. I can, of course, only give the opinion I have formed, with such reasons at once, without any opportunity now of consulting books.

The presumption is generally in favor of the Constitutionality of a law, and the *onus* of showing that it is not Constitutional, is upon him who attacks it. The Act does not transcend the Constitution in authorizing the Courts to appoint Commissioners. It is provided in the Constitution, that "Congress may by law, vest the appointment of such inferior officers as they think proper in the President alone, in the *Courts of Law*, or in the heads of departments."

It is further objected that the office of the Commissioner is a Judicial office, and that he is to adjudicate and determine the question whether the fugitive was held to service or labor, in other words, whether he is a slave or a freeman.

The Statute has not been understood as creating a Judicial Office or Court. My attention is directed particularly to the sixth section of the Act. It contains many particulars, and its language is not very clear. It provides that when a person held to service or labor, escapes into another State, the person to whom the service or labor is due, or his agent, or attorney, duly authorized, &c., may pursue and reclaim the fugitive, by procuring a warrant from one of the Court's Judges or Commissioners named in the Act, or by seizing him when the same can be done without process, and to bring him forthwith before the Court, Judge, or Commissioner, "whose duty it shall be to hear and determine the case of such claimant in a summary way."

The Commissioner may take depositions or affidavits in writing, and he is to certify them, or he may receive other satisfactory testimony, which has been *duly taken and certified* by a Court, Magistrate, Justice of Peace, or other legal officer authorized to administer an oath, and to take depositions under the laws of the State from which the person owing service escaped. He may receive proof, also, by *affidavit*, of the identity of the person, and that he owes service or labor to the person claiming him, and that the person escaped, and upon such satisfactory testimony, he is to make out and deliver to the claimant *a certificate, setting forth the substancial facts* as to the service or labor due from such fugitive to the claimant, and of his escape with authority to such claimant to take and remove the fugitive to the State from which he escaped.

The Commissioner receives the depositions, or affidavits, or testimony duly taken in another State, and if they are such as the statute requires, and establish the particulars mentioned in the statute, the Commissioner

must give the certificate, which sets forth the facts appearing before him, and certifies to the authority of the claimant, or his agent, to remove the fugitive. He pronounces no judgment, he decides nothing except that the *depositions, affidavits, and certified testimony* are according to the statute, and are satisfactory; and he certifies the facts with authority to remove. A case for *removal* being made out, the certificate is given. The rights of the person claimed, to freedom, are not concluded by these proceedings in the State to which he is taken. There he can have a trial by and under the laws of that State; and the proceedings before the Commissioner cannot be used as a *judicial determination* of the fact that he is a slave.

The act, in my opinion, has not attempted to suspend the writ of *habeas corpus*. This is not, and cannot be suspended except in the cases mentioned in the Constitution; and if the act contained a provision to suspend the writ, such part of the act would be void. This would not affect other independent provisions of the act.

It is further insisted that the act is unconstitutional because it allows testimony, depositions, &c., taken before State officers. And on the part of the defence it if argued that the State law, under which the defendant is indicted, is unconstitutional. Some confusion has arisen, I apprehend, from the authorities cited and the arguments upon these questions. It is true that the *judicial power* of the United States is vested in the United States Courts, and that Congress has no power to vest *judicial powers* in State Courts. It does not, however, follow that a State judge, or magistrate, or court, may not execute and carry into effect laws passed by Congress when those laws provide that the State judge, magistrate, or court, may do so. The State magistrate derives all his *judicial power* from the State constitution, or laws. He may, however, if he pleases, *use that judicial power*, in executing the law of the United States, with the direction or consent of the United States law, provided the laws of the State do not forbid, and provided further that the thing to be done by the State magistrate or court can be done in the manner, and in accordance with the rules, proceedings, and practice of the State court. A State court cannot execute the criminal laws of the United States. The crime being charged against another sovereignty, &c., &c. I think these principles and distinctions will appear from a careful examination of the cases cited, and from other cases, and they will be found so stated, I think, in Kent's Commentaries, treating upon the jurisdictions of the the United States, and State Courts, as affected by the United States Constitution. Now, as to the State law under which the defendant is indicted. I think the particular section upon which this indictment is founded, is clearly Constitutional. The act relates generally to proceedings before State magistrates and officers, when fugitives from service and labor are claimed. The act of Congress of 1793, confided the

execution of the laws to State magistrates as well as United States. Now, as the State, by statute, has power to regulate and control the action of its own officers and agents, (when this power is not limited by the State constitution,) it may entirely prohibit the State judge or court from using the *judicial powers* derived from the State, in execution of the law of Congress, and that leaves the execution of the law to the judicial power of the United States. It may also regulate the exercise of the *State judicial power*, when employed in executing the United States law, being, however, careful not to provide or require anything conflicting with any of the provisions of the United States law. That, if the State court, takes jurisdiction of the case. must be strictly followed.

The section of the statute under which this indictment is found, provides that "every person who shall, *without authority of law*, forcibly remove, or attempt to remove from this State, any fugitive from service or labor, or any person claimed as such fugitive, shall forfeit &c., and shall be deemed guilty of the crime of kidnapping, &c." This provision is not only Constitutional, in my judgment, but is extremely proper, whatever may be said of other provisions of the act, upon which I am not called to express an opinion and which I have not examined with sufficient care. This section makes it a criminal offence to attempt the forcible removal *without authority of law*. This is certainly Constitutional, and a very proper provision. It does not affect those who act under *authority of law*. This will include the Constitution and laws of the United States, as they are the Supreme law of the land. The State should protect all its people, and every person in it, from *unlawful* seizure and removal.

These views dispose of this case. The parties, by their pleadings and stipulations of facts, reduced the questions to questions of law. Counsel have argued those questions with learning and ability. The grave questions discussed have excited some feeling. All our sympathies are in favor of the great principles of liberty. In our own State, we carry out those principles to their legitimate results. But, as we have seen in some of the other States, those principles have not been extended to all persons. Some are held to service and labor against their will. This is a regulation of the State, and such State is responsible for it. Our own State is not. Our people are not. We have no right to interfere. By becoming parties to the Constitution of the United States, we consented that these persons held to service or labor, escaping into this State, might be removed back to the State where such service or labor was due. Judges and Courts have no discretion. They are sworn to support the Constitution of the United States and the State, and they are to declare the law faithfully as they understand it, and every citizen owes obedience to the laws which protect him.

The defendant has done no act that he was not required by law to do.—He, therefore, cannot have been guilty of a crime, and I recommend the jury to acquit him.

And thereupon the jury rendered a verdict—Not guilty.

FUGITIVE SLAVE ACT OF 1850.

An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved February twelfth, one thousand seven hundred and ninety-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the Circuit Courts of the United States, and who, in consequence of such an appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States, may exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An Act to establish the Judicial Courts of the United States," shall be, and are hereby, authorized and required to exercise and discharge all the powers and duties conferred by this act.

Sec. 2. And be it further enacted, That the Superior Court of each organized Territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the Circuit Court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the Superior Court of any organized Territory of the United States, shall possess all the powers, and exercise all the duties, conferred by law upon the Commissioners appointed by the Circuit Courts of the United States for similar purposes, and shall, moreover, exercise and discharge all the powers and duties conferred by this act.

Sec. 3. And be it further enacted, That the Circuit Courts of the United States, and the Superior Courts of each organized Territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

Sec. 4. And be it further enacted, That the commissioners above named shall have concurrent jurisdiction with the judges of the Circuit and District Courts of the United States, in their respective circuits and districts within the several States, and the judges of the Superior Courts of the Territories, severally and collectively, in term time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

Sec. 5. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and

should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the Circuit or District Court for the district of such marshal; and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory, or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to ensure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run, and be executed by said officers, any where in the State within which they are issued.

Sec. 6. And be it further enacted, That when a person held to service or labor in any State or Territory of the United States, has heretofore, or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer, or court, of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners, aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition, or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to

the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped, as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due, to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be neccessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

Sec. 7. And be it further enacted, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the District Court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall, moreover, forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the District or Territorial Courts aforesaid, within whose jurisdiction the said offence may have been committed.

Sec. 8. And be it further enacted, That the marshals, their deputies, and the clerks of the said District and Territorial Courts, shall be paid for their services, the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent, or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee

of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid in either case by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them; such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and, in general, for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimant by the final determination of such commissioners or not.

Sec. 9. And be it further enacted, That, upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service as long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

Sec. 10. And be it further enacted, That when any person held to service or labor in any State or Territory, or in the district of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States, to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to

the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize, or arrest and transport such person to the State or Territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence, the claim shall be heard and determined upon other satisfactory proofs, competent in law.

APPROVED, September 18, 1850.

MILLARD FILLMORE.

FUGITIVE SLAVE ACT OF 1793.

CHAP. XLV.—*An Act respecting Fugitives from Justice, and Persons escaping from the service of their Masters.*

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the Executive authority of any State in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice of the Executive authority of any such State or Territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any State or Territory as aforesaid, charging the person so demanded with having committed treason, felony or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the Executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the Executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged; and all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

Sec. 2. And be it further enacted, That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the State or Territory from which he or she shall have fled. And if any person or persons shall by force set at liberty or rescue the fugitive from such agent while transporting as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Sec. 3. And be it also enacted, That when a person held to labor in any of the United States, or in either of the Territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or Territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any Judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such Judge or Magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such Judge or Magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant

for removing the said fugitive from labor to the State or Territory from which he or she fled.

Sec. 4. And be it further enacted, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared, or shall harbor or conceal such person after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any Court proper to try the same; saving moreover to the person claiming such labor or service his right of action for or on account of the said injuries, or either of them.

Approved February 12, 1793.

CONSTITUTION OF THE UNITED STATES.

We, the People of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I—Section 1.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and

of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rule of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the

United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered; and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him; or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power--

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the Supreme Court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the Government, and regulation of the land and naval forces;

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States; reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

16. To execute exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States; and to exercise the like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the Government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties to another.

6. No money shall be drawn from the treasury, but in consequence of appropriation made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no per-

son holding any office of profit or trust under them, shall without the consent of the Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years; and together with the vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and representatives to which the State may be entitled in the Congress; but no Senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list; the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representatives from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the vice-President.

4. The Congress may determine the time of choosing the electors, and

the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President: neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President, and vice-President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States: and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2.

1. The President shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur: and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill any vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section 3.

1. He shall from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws are

faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The President, vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming land under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on de-

mand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature can not be convened,) against domestic violence.

ARTICLE V.

1. The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application to the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine States shall be sufficient

for the establishment of this constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President and Deputy from Virginia.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The following amendments were proposed at the first session of the first Congress of the United States, which was began and held at the city of New York, on the 4th of March, 1789, and were adopted by the requisite number of States. (1 vol. Laws of U. S., page 72.)

The following preamble and resolution preceded the original proposition of the amendments, and as they have been supposed by a high equity judge (8th Wendell's Reports, p. 100,) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first Congress.

CONGRESS OF THE UNITED STATES,

Begun and held at the City of New York, on Wednesday, March 4th, 1789.

The Conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction and abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the government will best insure the beneficent end of its institution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, that the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States; all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, namely:

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Article III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV.

The right of the people to be secure in their persons, houses, papers and

effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[The following amendment was proposed at the second session of the third Congress. It is printed in the Laws of the United States, 1st vol., p. 73, as article 11:]

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

[The three following sections were proposed as amendments at the first session of the eighth Congress. They are printed in the Laws of the United States as article 12:]

ARTICLE XII.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an in-

habitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

[In the edition of the Laws of the United States before referred to, there is an amendment printed as article 13, prohibiting citizens from accepting titles of nobility or honor, presents, offices, &c. from foreign nations. But, by a message of the President of the United States of the 4th of February, 1818, in answer to a resolution of the House of Representatives, it appears that this amendment had been ratified by only 12 States, and therefore had not been adopted. See vol. iv. of the printed papers of the first session of the 15th Congress, No. 76.]

CAN SLAVERY, BE LAW?

A Word with the Members of the Pittsburgh Convention:

AMERICAN SLAVERY, is a Crime.

AMERICAN SLAVERY, is a Sin.

It is Crime, because Robbery.

It is Sin, because Blasphemy.

It is Crime, because a violation of the Natural Law of Human Brotherhood.

It is Sin, because it mocks the Father of All, in buying and selling, and making beasts, of beings He has declared were made in "His image," and therefore immortal.

And yet, there are some Lawyers and Priests—not "Scribes and Pharisees, hypocrites!"—in the State of New York, who tell us that such violations of the written and unwritten laws of the Deity, can be HUMAN LAW! That the Laws of God, as written in the Bible, and on Man's Nature, can be repealed by man at will, and other laws substituted for them. That Sin against the author of our being, can be Law!

Even George F. Comstock—the leading counsel for U. S. Deputy Marshal Allen, indicted for kidnapping the man Jerry—on the recent trial of the case in this city, deliberately and repeatedly "admitted Slavery to be a Sin." This admission does not prove it to be so; but from such a source, on such an occasion, and with such deliberation of manner, it is worthy of note. And if slavery be a Sin, it is of course a Crime; for any act towards a fellow-man that is sinful, must be criminal.

What, then, are we to say of the man who maintains that Sin and Crime can be the web and woof of Law! In the perfect system of laws which the Almighty has established for the government of the universe, Crime and Sin are not Law, but are rebellion against Law. Therefore, he who maintains that Crime and Sin can be Law, maintains that Man is higher than God. The power to repeal an existing law, and to substitute another in its place, must be equal or superior to the power which established it. Hence, if it be maintained that man can make Crime and Sin LAW, it must also be maintained that man is the equal or superior of his Creator. And hence, also, he who maintains that Slavery can be Law, is a "Higher Law" man, but with Man above, and the Deity and His laws, under foot.

Such is the logical attitude of those who maintain that Slavery can be Law. Was Fanaticism, so crude, so blind, so stupid, so infatuated, ever known before? Away, then, with such nonsense! Away with this bartering of men's brains—with such stultification of the noble intellect of man, given for the sacred ends of usefulness and happiness! And by all that is sacred in human suffering and woe; by all that is sacred in human hopes and happiness; by the inevitable degradation of oppressors and oppressed; by their love for themselves, not less than by their love for their neighbors; by the ever pressing obligations of Truth; by their inextinguishable veneration for the sacredness of Law; are the professed friends of Freedom bound no longer to commit perjury in this matter. They are bound by the most solemn oath that can touch the human conscience—professed fidelity to the

Rights of All—not longer to be traitors to Truth. Then will it be declared by you—then must it be declared—that SLAVERY CAN NOT BE LAW. That no Statute, upholding in any manner any pretension of American Slavery, can be Law, till God is dethroned, and His power and attributes made subservient and obedient to the will of man.

Again: When or where on all the earth, except among professed pirates and freebooters, was it ever claimed that the possession of stolen property was conclusive evidence of ownership? When and where—by any, save pirates and freebooters—was it ever held that the purchaser of stolen property—even not knowing it to be such—was to maintain title for an instant against the original owner? There is not a lawyer in America so idiotic, as to pretend that the mothers of the people now claimed as slaves, did not once own themselves. How came their mothers to be slaves? By theft! They were stolen from their own possession. By what power of transmutation, then, does Robbery become Law? And if Robbery can not be Law, what else than Robbery is every hour of involuntary servitude in America, to-day? The world is dumb to such a question, for logic condemns the world to silence. If a man steal cattle, or horses, or sheep, do their offspring, by any transmutation ever heard of, in law, become his own? And are they not recognized as stolen, when the original proprietor reckons with the thief? And so far from permitting the thief to call the offspring of the stolen beasts his own, though reared by himself, the law makes requisition on him for damages, in the forms of imprisonment and fine.

But only once, again. The villainy and robbery of American Slavery, to-day, can not be shouldered on dead negro stealers. In a large share of American Slaves, only from one-fourth to one-hundredth part of their blood ever came from Africa!—was ever stolen! They are the sons and daughters of Free Men, in the proportion of from one-quarter to ninety-nine hundredths of blood. Beyond reach even of the shadow of sophistry, original robbery was committed on them, the hour they were born.

LAW, is a Rule of Right. SLAVERY, is a total Wrong. Therefore, SLAVERY can not be LAW.

What! Are the rights of man a bagatelle!—a mere gossamer, that wilts and withers at the touch of a human statute? Never! Rights are from God. They are indestructible. Man, can not create a Right. Man, can not confer a Right. Man, can not destroy a Right. The utmost limit of his power, is, by Might, to trample down Right, as the strong man can throttle that life out of a child, which of right belongs to it. So can the strong take from the weak that Liberty which belongs to him; but he can not take away the Right to that Liberty. Man can not create one particle of matter: he can not destroy one atom. The Rights of Man, like the matter of the material universe, are from the Great First Cause. Like that, they are for ever subject to His laws, and the objects of His guardian care; and by His almighty power alone, can they be destroyed. Every hour a human being is held in Slavery, is that taken from him to which he has title by charter from the Almighty; and, therefore, the involuntary servitude of an innocent man, is, at all times, under all pretences, all circumstances, all contingencies, and all combinations, Robbery. And Robbery, can not be Law.

Then let the Pittsburgh Convention declare that HUMAN SLAVERY, CAN NOT BE LAW!

Human Slavery either can be Law, or it can not. If it can be Law, you,

as honest men, and not hypocrites, are bound so to declare. And not only to declare that it can be Law, but to cease forever what would then be contemptible cant, about the Rights of Man. You are bound frankly and boldly to declare, that, as Human Slavery is within the competency of law, the regulations which shall control it, are of right to be left absolutely to the judgment and feelings of the enslavers. Are you to judge for another, in that which it is his right to do? Never! Then abandon your criticisms and denunciations of Fugitive and other Slave Laws, for they but accomplish their purpose—the enslavement and beasthood of human beings; and as to the necessity and fitness of means to ends, they, not you, in that case, are the rightful judges. You concede to them the right—the power—the authority—to legislate, and then are you to tell them how it shall be done! What wonder that the proud and haughty tyrants, flout your impertinence and insolence in your teeth!

But declare the Truth, and how changed the scene! How instantly all becomes clear! How well defined the path of duty and of right! Man has Rights. Mankind are a Brotherhood. As a Brotherhood, each is responsible to the eternal and unchangeable Law of his Creator; and that Law is, "Thou *shalt* love thy neighbor as thyself." The first and highest duty which can arise under that Brotherhood, is, to maintain inviolate those Rights in the case of every human being. It is the right and the duty of all, to protect all. Here, then, in the condition of the Slave—by force, and force alone, deprived of all his Rights—you have business of your own to attend to, in vindicating his unqualified claims to be relieved from the unhallowed and piratical oppression which weighs him to the earth.

Then, "why halt ye between two opinions?" If there be a God of infinite attributes, Slavery is not Law. There is not room for debate; and "he who is not *for* the Truth, is against it."

The man who—even by silence—concedes that Slavery can be Law, concedes all that any friend of Tyranny in the universe can desire. For if Slavery can be Law, then the provisions of Law to maintain and defend it, must for ever be such, and rightfully such, as the exigencies of the case demand.

The logic of your position, not less than imperative obligation to Truth, demands of you the declaration that Human Slavery can not be Law. For what is the logic of your political position, if it be not antithetical to that of the two Baltimore Conventions of 1852? What has called you to Pittsburgh? Is it the belief, that the Baltimore Conventions were partly right and partly wrong, in trampling Liberty under foot? Is it your doctrine, that it is the manner in which the Rights of Man are cloven down by this Government, which concerns you and all defenders of the Right, and not the fact that they are cloven down? Do you maintain, that Liberty may be throttled by a silken, but not by a hempen, cord? Is it your doctrine, that one man may be made the beast of another, on the oath of twelve others, called Jurymen, and not by the wicked cunning or strong arm, of the kidnapper? Is your logic so ductile, that this infamous robbery and outrage—which language can not express, nor imagination conceive—becomes "sanctioned and sanctified," when twelve men, named jurymen, and not a poor, bribed United States Commissioner, pronounce the execrable and diabolical sentence of tyranny? If such be the men who assemble at Pittsburgh, as the chosen Opponents of Tyranny, and defenders of Human Rights, in the middle of the nineteenth century, when at their

very hearthstones the form of Liberty lies bleeding and prostrate, may God have mercy on them, as mankind never will; for their memory will rot, and even the passing gale refuse to bear a sigh to their remembrance. But it will not be so. The millions on millions of "poor dumb mouths," all over this beautiful earth, who, in the touching eloquence of Hope breaking through Despair, are imploring you to stand by the Truth, are not, can not be, doomed to such dark and overwhelming disappointment.

To complete the statement of your political position. The Baltimore Conventions do not even pretend to be friends of Liberty. There is nothing inconsistent, nothing illogical, in all their action. It is wholly consistent with whatever professions they have made, to go for any possible tyranny. But you declare that Liberty is sacred—that it is divine! And yet, will you, by words, or by silence, say to the world, that Liberty can be extinguished by Law? What a ludicrous antithesis you would form to the Baltimore Conventions!—merely *extending* the odious line of Compromises: they, casting principle to the winds, making a Compromise of Men—you, professing Principle, making a Compromise of Logic. One, execrable; the other, execrable and ludicrous.

Does Slavery murder Liberty? With what, then, is our controversy?—with the murder itself, or with the mode and manner? Murder will—aye, it must—have its fitting incidents of horror. But the real horror, is the murder. The murder is the great fact; and when that ceases, its concomitants—clear, necessary, indispensable concomitants—will cease with it.

Men of Pittsburgh! Is there one of you who will stand up in Convention, and vote for a Declaration to put on the record of your proceedings, that a statute passed to make you a Slave, can be Law? If not, then will you not declare the doctrine to be applicable to all men? And if you will not do this, what becomes of your professed Humanity—Brotherhood—Philanthropy—if you deny to a single human being, Rights you claim for yourselves? The question answers itself, now and for all time. The men of Baltimore steer clear of all possible accusation of hypocrisy; for they make no pretence that any human being is entitled to Liberty, save him who is able to get it and keep it.

Make this noble and heaven-born Declaration, that SLAVERY CAN NOT BE LAW, and you challange the logic of the universe. The final issue is made up. Slavery can be Law, or it can not be Law. The Lawyer must lay down his pettifogging; the wily, and hard-hearted Priest his mystification; and both must stand before community, grappling with the stern, pithy logic of this Declaration. It must be yea, or nay. Moreover, if Slavery can be Law, they must show how it can be Law. They must show how the thing can be done. The people will, at once, determine what LAW is; they know what Slavery is; and they will require of them to show by what process the two can be made one. The people will require the details, step by step, of the mode in which, by Law, a man can be made not a man, but a beast—a thing—a chattel. Where, then, will stand the Lawyers and the Priests, who now tell the people that Slavery can be Law? The Lawyers will "surrender at discretion;" while the unprincipled portion of the priesthood, will have to content themselves with their blasphemous attempts to prove the harmony of Slavery and Revelation! They can not beg the question. They must prove every inch of ground on which they stand. At one blow, you drive them to this position. They say Slavery can be Law. You deny that Slavery can be Law. The burden of proof falls on them. They have the

affirmative; and they must maintain it, or they will be scouted by a cheated, insulted, outraged people. And, rest assured, the parley will be a short one. On one side, it will be maintained that Slavery is Law: on the other, that it is Land Piracy. This distinction is broad; and the whole people will see at a glance that Slavery must be one or the other. It is self-evident, that it can not be both. Then let there be no fears of the decision. But how can this decision be made, unless you first make the issue? Do it, and you will be triumphant. The domestic, social, and moral affections of our nature, which in the pure soul chime such sweet and unceasing music in praise of the Creator's wisdom and goodness, are incorrupt in the great body of the people; and not more sure is the lightning in its aim, not more true the needle to the pole, than the fidelity of these impulses in reaching the Truth in such an issue as this.

Make the Declaration!—and American Slavery can never know another hour of even comparative quiet, till the delicious music of its last expiring groan shall have been heard. This mighty, yet simple Truth, will stalk abroad and haunt them at every turn; and in the agitation to which their troubled minds will force them in a vain attempt to drive it from the face of the earth, they will agitate Slavery to death:—"A Suicide!" being sole and fit memento, to perpetuate the memory of the fact that so deformed, monstrous, and abhorrent a thing, ever had existence on this fair earth.

Make the Declaration! For in moral sublimity, it would be without a parallel in the annals of mankind.

Make the Declaration! It would shake the foundations of Despotism, as an electric shock the firm earth. It would break the last slumber of tyranny. Slavery not Law! What then? Piracy!—Robbery!—Outrage!

Make the Declaration! It would light the Pomethean fires on the altars of Freedom throughout the world; and thence, sweet incense from the hearts of all the hopeful and hopeless lovers of Liberty, would rise forever to the memory of the brave, and heroic, and great men, who made it. It would be like the lurid lightning athwart a lowering sky; revealing the pathway of Hope, which, in painful, faltering, and toilsome steps, the devotees of Liberty will yet traverse to Victory.

Make the Declaration! It would be the Great Act of the Age. It would stamp the Age; and give to it character in legend, in song, and in story. But language seems feeble and worthless, when we wish even to glance at the issues of the mightiest, and most heroic, and most imposing Declaration ever put forth by man, under similar circumstances. Its vastness—in influence, widening and deepening as it moves down the stream of time—puts even imagination at fault.

Make the Declaration! For by it you speak to the world in an immortal voice.

Make the declaration!—and you forever escape designation as a band of "whited sepulchres!"—"hypocrites"—who professed to love their fellowmen, and then, like knaves or cowards, betrayed them; thus earning the deep, bitter, and everlasting execrations of the Oppressed of all ages and all Lands, but that hate and scorn would be smothered in pity and contempt.

Make the Declaration! For what a thrill of joy it would send throughout the intelligent universe of God! The myriads of oppressed men and women of the earth, with one accord, would take up your glorious key-note to the Song of Deliverance, and the hosts of heaven would respond in melodious harmony.

Make the Declaration! It would cast its clear and beautiful light through the vista of distant ages, revealing in perfect outline the comely proportions of the Temple of Liberty; while the uncounted millions of sorrowing and oppressed—hitherto deprived of their fair share of God's heritage—calm and rejoicing, would forever quietly repose in its mighty shadow.

Make the Declaration! And if, in the hour you make it, every man of you were to descend to the silent tomb, you would have accomplished more for the redemption of the human race from the thraldom of degradation and sorrow, than, without it, you could accomplish in a myriad of lives, such as in the order of nature are alloted to man.

Make the Declaration! For remember that Falsehood is ever born of Folly. Remember, that "Corruption wins not more than honesty." Remember that the "instincts of the people are wiser than the wisest statesman." Remember, that the mind of man, as created, not as perverted, is the guide of the devotees of Truth. Remember, that the irrepressible and inextinguishable impulses of every human being in the universe, instantly respond to the truth of the Declaration, as applied to himself. Remember, that if you fail to declare one jot or tittle of what you believe to be true, on this question, you are neither more nor less than a set of trading Politicians. Remember, that he is a fool, who sets about building a Temple to Liberty, part of Truth and part of Falsehood—part of Justice and part of Outrage. Remember, that the friends of Freedom expect of you to lay, deep and broad, the foundations of a true Political Church, on this Western Continent, and not to see how you are to get the largest congregation in 1852. Remember, that your action will prove you the proudest of heroes, or the veriest of cowards: For this is THE HOUR, when Liberty prevails not on one foot of God's Earth.

What a spectacle, for the contemplation of the Present and of all Future Ages, if the hundreds of Delegates assembled at Pittsburgh—like the four hundred Magyars of the Hungarian Diet—were to rise as one man, and swear before Heaven and Earth, that SLAVERY, CAN NOT BE LAW!

Very Respectfully,
Your obedient servant,
WM. LUSK CRANDAL.

SYRACUSE, August 7, 1852.